

MUNICIPAL CORPORATION: Agreement governing a general deposit of funds between a bank and housing authority
HOUSING AUTHORITY: is not invalidated because one of the commissioners is also an officer of the bank.

April 16, 1951

St. Louis Housing Authority
Honorable James M. Douglas, Counsel
705 Olive Street
St. Louis 1, Missouri



Dear Judge Douglas:

This will acknowledge receipt of your request for an official opinion which reads:

"On behalf of the St. Louis Housing Authority, a municipal corporation created under the provisions of Chapter 99, R. S. 1949, I respectfully request your opinion on the following question:

"Does Section 99.060 render invalid an agreement governing a general deposit of funds between a bank and a Housing Authority, organized under Chapter 99, R. S. 1949, relating to Municipal Housing, because one of the commissioners of the Housing Authority is also an officer of the bank?"

You specifically inquire if Section 99.060, RSMo 1949, renders invalid an agreement governing a general deposit of funds between a bank and a Housing Authority organized under Chapter 99, RSMo 1949, for the reason that one of the commissioners of the Housing Authority is also an officer of the bank.

Chapter 99, supra, was enacted by the Legislature to stimulate the building of housing for those persons with low incomes and contemplates the clearance of slum areas and also the construction of dwellings and apartments by a Housing Authority managed by five commissioners appointed by the mayor, which commissioners receive no compensation, but are allowed necessary expenses including traveling expenses incurred in the performance of their official duties.

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It will be necessary for us to examine and construe Section 99.060, RSMo 1949, in order to answer your request. Said section reads in part:

"No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. * * "

The prohibition contained in the foregoing provision is limited to contracts only for "materials or services" and does not apply to all kinds of contracts. Therefore, if the general depositary agreement between a bank and the Housing Authority does not constitute a contract for materials or services to be used in connection with a housing project, then Section 99.060, supra, does not apply and our answer to your request must be in the negative.

"Materials" has been defined in 57 C.J.S., page 448, as follows:

"As usually employed in law, the word 'material' signifies things furnished to a workman or artisan to be used in his work, and it is commonly used to designate any article employed in the erection and completion of buildings * * * * *"

See also Terteling Bros. v. Glander, 85 N.E. (2d) 379, 383, 151 Ohio State 236.

"Services" has usually been understood to refer to work or labor. Webster's New International Dictionary, 2d Edition, defines "services" in the following manner:

"2. Performance of labor for the benefit of another * * * * *"

and

"4. The deed of one who serves, labor performed for another * * * * *"

Also in law "services" is defined in 57 C.J., Section 3, page 278, as follows:

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"The plural, 'services' is often used as having the same meaning as the singular 'service'; and it has been held to mean labor; work done by one person at the request of another, regardless of whether its nature be of a high or humble grade; although it has been said that in the plural the term involves more than mere labor, and signifies much more than merely the act of performing labor, and may include, as well, expenditures, materials, and things furnished."

In view of the foregoing definitions of materials and services, it is clear that an agreement covering a general deposit of funds is not a contract for materials or services as contemplated under Section 99.060 and Chapter 99, RSMo 1949. It is also clear that the services to be furnished in connection with any housing project under Chapter 99, supra, means work or labor used in the project.

"Housing project" is defined for purposes of Chapter 99, supra, in Section 99.020, subsection (12) as follows:

"'Housing project' shall mean any work or undertaking to demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreation or community purposes; or to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, site preparation, gardening, administrative, community, health, welfare or other purposes; or to accomplish a combination of the foregoing. The term 'housing project' also may be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith;"

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"Bank" has been defined under Section 362.010, subsection (3), RSMo 1949, when used in that particular chapter, as follows:

"'Bank' means any corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether such deposit is made subject to check, or is evidenced by a certificate of deposit, a pass book, a note, a receipt, or other writing;"

Further definitions of "banks" will be found in 7 Am. Jur., Section 2, page 24:

"Strictly speaking, the term 'bank' implies a place for the deposit of money. In its more enlarged sense, a bank may be defined as an institution, generally incorporated, authorized to receive deposits of money; to lend money and issue promissory notes, usually known by the name of 'bank notes'; or to perform some one or more of these functions."

In Section 4, at page 25, we find:

"The usual attributes of the banking business are receiving deposits, * * *."

The legal relation between a general depositor and a bank is that of debtor and creditor. The relation is not that of master and servant, principal and agent, employer and employee, or vendor and vendee.

In Section 444, Am. Jur., at page 313, it is stated:

"It is a fundamental rule of banking law that in the case of a general deposit of money in a bank, the moment the money is deposited it becomes the property of the bank, and the bank and the depositor assume the legal relation of debtor and creditor."

It is the settled law of Missouri that the relation between a bank and its depositor is that of debtor and creditor.

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One of the primary rules of the construction of statutes is to ascertain and give effect to legislative intent. See State ex inf. Rice ex rel. Allman v. Hawk, 228 S.W. (2d) 785; also Meyering v. Miller, 51 S.W. (2d) 65, 330 Mo. 885. Another well established rule of statutory construction is that where the language of a statute is plain and admits by one meaning there is no room for construction. See Cummings v. Kansas City Public Service Co., 66 S.W. (2d) 920, 334 Mo. 672.

In view of the foregoing decisions defining various terms as used in the particular section under consideration and rules of statutory construction referred to, we are of the opinion that said section is not ambiguous, that such an agreement for a general deposit of funds by said Housing Authority in a bank where one member of said Housing Authority is also an officer of said bank is not invalidated for that reason.

CONCLUSION

It is therefore the opinion of this department that the bank is not furnishing any services which enter into a housing project by receiving a deposit of funds. The bank merely accepts the money furnished to it by the Housing Authority, uses it for the bank's business, and agrees to pay back a like amount when the Housing Authority demands it. The depositary agreement with the bank is clearly not a contract for materials or services to be used in a housing project. Therefore, Section 99.060, supra, does not render invalid a general depositary agreement between a bank and a Housing Authority where one of the commissioners of the Authority is also an officer of the bank.

Respectfully submitted,

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APPROVED:

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