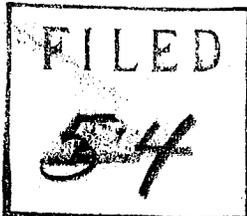


BANKS:  
LOAN LIMITS:



In a situation where two or more persons are partners in an enterprise, and carry a partnership account in a bank, but borrow no money in the partnership name, the individual borrowing of any of the partners is not to be taken into consideration in determining the loan limit from the bank of any other partner or partners.

October 8, 1954

Senator Edward V. Long  
Senator 21st District  
Bowling Green, Missouri

Dear Senator Long:

Your recent request for an official opinion reads as follows:

"In considering some possible legislation this coming Session, I would appreciate the following Opinion on a situation which I believe Section 362.170, Paragraph D, Revised Statutes of Missouri, 1949, attempts to cover.

"In this situation, Mr. Smith and Mr. Jones are partners in an enterprise and carry a partnership account in the bank but borrow no money in the partnership name. Mr. Smith has a line of credit in his individual name and Mr. Jones has a line of credit in his individual name, but such individual borrowing in no way applies to the partnership. Is the debt of these two added together when computing the loan limit that can be advanced to one of them?"

Subparagraph (1, d) of Section 362.170 RSMo 1949, reads:

"(d) In computing the total liabilities of any individual to a bank there shall be included all liabilities to the bank of any partnership of which he is a member, and any loans made for his benefit or for the benefit of such partnership; of any partnership to a bank there shall be included all liabilities of its individual members and all loans made for the benefit of such partnership or any member thereof; and of any corporation to a bank there shall be included all loans made for the benefit of the corporation."

We do note that Section 388, page 802, Vol. 9, C.J.S. states in part:

Honorable Edward V. Long

"The statutory limitation on amount of loans is one on the primary liability of a single person or corporation to pay to the bank a certain amount of money, regardless of whether the bank itself furnished him with that money or purchased the indebtedness from another."

The above general statement is not too helpful, however, in the specific situation set forth by you. We must, therefore, look at the bare face of the subsection and attempt to construe its meaning. From the opinion request it is clear that the partnership has no money borrowed from the bank, nor does it seek to borrow money from the bank. The only potential borrowers are Smith and Jones, each of whom has previously established credit with the bank, and each of whom has an account with the bank. Consequently, we are dealing with the right of an individual under the subparagraph to borrow from the bank, and we are ascertaining what liabilities of such individual are to be taken into consideration when determining the loan limit of this individual.

The first portion of the subparagraph of the statute deals with the total liabilities of any individual to a bank and among these liabilities we are forced to include:

- (1) All liabilities to the bank of a partnership of which the individual is a member;
- (2) Any loans made for the benefit of the individual securing an additional loan;
- (3) Any loans made for the benefit of the partnership of which the individual seeking the loan is a member.

From the facts outlined in the second paragraph of the opinion request I conclude that no liabilities named in (1) and (3) outlined above are in evidence when Mr. Smith or Mr. Jones applies for an individual loan.

The second portion of the subparagraph of the statute deals with a loan being made to any partnership. The facts before us do not disclose that a loan is to be made to a partnership, consequently, the second portion of the subparagraph does not come into play.

The third portion of subparagraph of the statute deals with a loan to a corporation and of course the facts in this opinion request do not involve a loan to a corporation.

Honorable Edward V. Long

It is our opinion that since the partnership of which Mr. Smith and Mr. Jones are members, is not seeking to borrow any money, the individual partners may seek to have their own individual line of credit increased without having the liabilities of each added for the purpose of determining the loan limit of either of the individuals composing the partnership.

CONCLUSION

It is the opinion of this department that in a situation where two or more persons are partners in an enterprise and carry a partnership account in a bank, but borrow no money in the partnership name, that the individual borrowing of any one of the partners is not to be taken into consideration in determining the loan limit from the bank of any other partner or partners.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

HPW/ld

JOHN M. DALTON  
Attorney General