

BANKS: Banks and Trust Companies liable for
TRUST COMPANIES: incorporation fees, and fees upon
CORPORATIONS: increase of stock, as required by Sec-
tion 351.065 RSMo 1949.



August 12, 1955

Honorable J. A. Rouveyrol
Commissioner, Division of Finance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Rouveyrol:

This opinion is rendered in answer to your inquiry reading as follows:

"Under Section 362.030, RSMo 1949, applicable to banks, this Division has, for many years, required payment of the 'incorporation tax or fee' prescribed by Section 351.065, RSMo 1949, and like payment has been required when a bank amended its articles of incorporation by increasing its stock. Trust companies have been accorded similar treatment by this Division. In some cases these charges are of substantial amounts.

"One of the trust companies in this state recently declared a substantial stock dividend and when we billed the trust company for our usual fee, the trust company questioned our authority for so doing. Their counsel stated that he knew of no section in the banking law which covered these charges.

"May I have your opinion as to whether or not we are justified in making these charges."

Sections 362.030 RSMo 1949, Cumulative Supplement, 1953, relating to incorporation of banks, states at what stage of incorporation the commissioner of finance is to conduct his initial investigation as a condition precedent to issuance of a certificate of incorporation. Such statute provides, in part, as follows:

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"When any bank shall have filed with the commissioner a certified copy of its articles of agreement and shall have paid all incorporation and other fees in full, as required by law, and shall have provided the cash required by law, the commissioner shall, before such bank shall complete its incorporation, examine or cause an examination to be made," etc. (Underscoring supplied).

Section 363.050 RSMo 1949, relating to incorporation of trust companies, contains language identical to that quoted above from Section 362.030 RSMo 1949, Cumulative Supplement, 1953.

Section 362.325 RSMo 1949 makes provision for an incorporated bank to amend its charter and thereby increase its capital stock. Under this statute a statement of corporate proceedings looking to the increase in capital stock is required to be filed with the commissioner of finance as a condition precedent to his issuance of a certificate of compliance. Subparagraph 5 of said Section 362.325 RSMo 1949, provides:

"Upon the filing of such certified copy the commissioner shall promptly satisfy himself that there has been a compliance in good faith with all the requirements of the law relating to such increase or change, and when he is so satisfied he shall issue a certificate that such bank has complied with the law made and provided for the increase of capital stock, and the amount to which such capital stock has been increased or for the change in the length of its corporate life or any other change provided for in this section. Thereupon, the capital stock of such bank shall be increased to the amount specified in such certificate or the length of the corporate life of the bank shall be changed or other authorized change made as specified in such certificate. Such certificate, or certified copies thereof, shall be taken in all courts of the state as evidence of such increase or change." (Underscoring supplied).

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Section 363.520 RSMo 1949, applicable to trust companies, provides for a like statement of corporate proceedings to be filed with the commissioner of finance as a condition precedent to his issuance of a certificate of compliance touching an amendment increasing capital stock, and the commissioner of finance, under said statute:

"* * * shall promptly satisfy himself that there has been a compliance in good faith with all the requirements of the law relating to such increase or decrease, or extending or changing its business as aforesaid, or availing itself of the privileges and provisions of this chapter, and when he is so satisfied he shall thereupon issue a certificate that such trust company has complied with the law made and provided for the increase or decrease of capital stock, as the case may be, and the amount to which such capital stock is increased or decreased; and such certificate or certified copies thereof shall be taken in all the courts of this state as evidence of such increase or decrease of stock; * * *"
(Underscoring supplied).

The foregoing quotations from Sections 362.030, 362.325, 353.050 and 363.520 RSMo 1949, clearly disclose the fact that the legislature, in treating the subjects of banks and trust companies has taken cognizance of the fact that banks and trust companies are corporations which issue stock and increase the same and are amenable to a general law on the subject of such stock issuance and increase thereof. Such law is to be found in Section 351.065 RSMo 1949, which provides, in part, as follows:

"1. No corporation shall be organized under the general and business corporation law of Missouri unless the persons named as incorporators shall at or before the filing of the articles of incorporation pay to the director of revenue fifty dollars for the first thirty thousand dollars or less of the authorized shares of such corporation and a further sum of five dollars for each additional ten thousand dollars of its authorized shares, and no increase in the authorized shares of such corporation shall be valid or effectual until such corporation shall have paid the

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director of revenue five dollars for each ten thousand dollars or less of such increase in the authorized shares of such corporation, and it shall be the duty of said corporation to file a duplicate receipt of the director of revenue for the payments herein required to be made with the secretary of state for the filing of articles of incorporation; provided, that the requirements of this section to pay incorporation taxes and fees shall not apply to foreign railroad corporations which have heretofore built their lines of railway into or through this state."

To briefly put the question to be resolved in this opinion:

Is Section 351.065 RSMo 1949 of the General and Business Corporation Law of Missouri (L.1943 p. 410) applicable to banks and trust companies?

Without giving in to laborious detail in this opinion, it will suffice to say that paragraph 1 of Section 351.065 RSMo 1949 is not unlike Section 5013, Article 1, Chapter 33, RSMo 1939, which article outlined the general powers and obligations of corporations for profit organized under Missouri's corporation law; and under Sections 5013 and 5014, R.S.Mo. 1939, banks and trust companies have been obliged to pay fees required by such statutes since their enactment over fifty years ago when incorporating, or increasing their authorized stock.

The General and Business Corporation Laws of Missouri (L.1943 p. 410), at Section 351.690 RSMo 1949, treats of the applicability of such law to corporations which existed at the time the law was passed, and reads as follows:

"The provisions of this chapter shall be applicable to existing corporations as follows:

"(1) Those provisions of this law requiring report, registration statements, antitrust affidavits, and the payment of taxes and fees, shall be applicable, to the same extent and with the same effect, to all existing corporations, domestic and foreign, which were required

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to make such reports, registration statements and antitrust affidavits, and to pay such taxes and fees, prior to the enactment of this law;

"(2) No provisions of this law, other than those mentioned in subdivision (1), shall be applicable to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies, and nonprofit corporations;

"(3) Only those provisions of this law which supplement the existing laws applicable to railroad corporations, union stations, co-operative companies for profit, credit unions, street railroads, telegraph and telephone companies, boating and rafting companies and exposition companies, and which are not inconsistent with, or in conflict with the purposes of, or are not in derogation or limitation of, such existing laws, shall be applicable to the type of corporations mentioned above in this subdivision (3); and without limiting the generality of the foregoing, those provisions of this chapter which permit the issuance of shares without par value and the amendment of articles of incorporation for such purpose shall be applicable to railroad corporations, union stations, street railroads, telegraph and telephone companies, and boating and rafting companies, and those provisions of this law mentioned in subdivision (1) will apply to all corporations mentioned in this subdivision (3).

"(4) All of the provisions of this law to the extent therein provided shall apply to all other corporations, existing under prior general laws of this state and not specifically mentioned in subdivisions (1), (2) and (3) of this section. (L.1943 p. 410 sec. 171, A.L. 1945 p. 696)." (Underscoring supplied).

Subparagraphs (1) and (2) of Section 351.690 RSMo 1949, quoted above, lead to the conclusion that "if banks and trust companies were required, prior to 1943, to pay incorporation fees, and fees upon increase of stock, under the then existing corporation code (Secs. 5013, and 5014, RSMo 1939), they are not relieved of such obligations under the 1943 law."

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Of special interest in this regard is the commentary on the General and Business Corporation Law of Missouri authored by Mr. Carson E. Cowherd, Chairman of a Committee appointed in January 1942 by the Lawyers Association of Kansas City to draft a proposed Business Corporation Code for Missouri and to sponsor its enactment into law. This commentary is found immediately preceding Chapter 351 of Vernon's Annotated Missouri Statutes, Vol. 17, Pages 299-322, and we quote from l.c. 301, 302 on this particular subject:

"APPLICABILITY OF THE ACT TO EXISTING
CORPORATIONS

"In drafting the Act an extremely difficult question arose as to how and to what extent the Act should be made applicable to existing corporations. It was first suggested that in order for an existing corporation to come under the Act it should be necessary that it elect to do so by affirmative action taken by its shareholders. Precedent for this procedure is found in Section 5031, R.S. 1939, which permitted corporations theretofore organized then in existence under any general or special laws of the state to accept the provisions of the general laws of the state relating to corporations by filing a certificate of acceptance with the Secretary of State. This suggestion concerning acceptance was not adopted except as to existing corporations for profit organized under any special law of the state (Section 351.025, R.S. 1949). The Act as passed makes existing corporations automatically subject thereto (Section 351.690, R.S. 1949) in so far as this may be done without impairing or affecting vested rights. (Section 351.695, R.S. 1949).

"This does not mean, however, that all existing corporations are fully or even partly subject to the Act. As set out in subparagraph (1) of said Section 351.690, existing corporations, foreign or domestic, required under the prior laws of the state to make and file reports, registration statements or anti-trust affidavits

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or to pay fees and taxes, must continue to do so under the Act and, as stated in subparagraph (2) of this section, except as to such reports, statements, affidavits, taxes and fees, the Act shall not apply to banks, trust companies, insurance companies, building and loan associations, savings bank and safe deposit companies, mortgage loan companies and non-profit corporations, and as stated in subparagraph (3) of this section:

" 'Only the provisions of this Act which supplement the existing laws applicable to railroad corporations, union stations, cooperative companies for profit, credit unions, street railroads, telegraph and telephone companies, boating and rafting companies, and exposition companies, and which are not inconsistent with or in conflict with the purposes of, or are not in derogation or limitation of such existing laws shall be applicable to the type of corporations, '

"mentioned in this subparagraph. Upon compliance with Section 351.030, R.S. 1949, any street railroad, telegraph and telephone or boating and rafting company may elect to organize under the Act, but it is not required to do so.

"In other words, the Act supplements the separate codes of various other types of corporations which are otherwise not changed or affected by the Act itself. This also is one of the principal reasons for discarding the idea that affirmative action should be required by existing corporations desiring to come under the Act."
(Underscoring supplied).

CONCLUSION

It is the opinion of this office that Section 351.065 RSMo 1949, requiring corporations to pay an incorporation fee, and an additional fee upon increase of capital stock is applicable to banks and trust companies incorporated in Missouri.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Very truly yours,

JOHN M. DALTON
Attorney General

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