

DIVISION OF FINANCE: Proposed agreement may conflict with Section 362.170, RSMo 1949.



February 1, 1955

Honorable J. A. Rouveyrol
Commissioner of Finance
Department of Business
and Administration
Jefferson City, Missouri

Dear Sir: (

This will acknowledge receipt of your request to examine the following proposed form of Repurchase and Reserve Agreement and render an opinion as to whether or not the execution of said agreement could possibly place some line of credit in excess of the legal limit as provided by Section 362.170, RSMo 1949. Said agreement reads:

"1. We desire you to assist us in the sale and distribution of new and used passenger and/or commercial automobiles herein call "cars" by the purchase from time to time of notes, chattel mortgages, conditional sale contracts, lease agreements or other security instruments herein called "notes", if acceptable to you that we so acquire from retail purchasers of such cars as evidence of the deferred balance owing thereon, said notes to be endorsed by us "Without Recourse" and to be purchased by you under your regular time sales plan in effect from time to time.

"2. In consideration of your acquiring from us from time to time obligations of retail purchasers of automobiles and paying us for the same without delaying to make your usual credit investigation of the purchaser, we agree to repurchase from you immediately upon demand and for the amount you paid for same, such of said obligations as

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may, upon subsequent investigation, prove unsatisfactory to you. This shall be a continuing agreement by us."

We gather from your request that automobile dealers desire banks to assist them in sale and distribution of passenger cars as well as commercial vehicles in this manner, by purchasing from time to time, notes, chattel mortgages, conditional sale contracts, lease agreements and that said auto dealers may have acquired from retail purchasers of motor vehicles, as balance owed thereon on purchase of said motor vehicles, said notes to be endorsed without recourse, which notes, etc., will be purchased by said bank under a regular time sales plan in effect.

In consideration of the bank's acquiring said notes, etc., without the necessity of the usual credit investigation, the auto dealer agrees to repurchase upon demand of said bank, immediately, any purchase the bank subsequently upon investigation proves unsatisfactory to said bank. (It is a continuing agreement).

Then said agreement further specifies that each note shall be subject to 6% discount of its face value, and that a reserve will be set up as a specific loss reserve to absorb losses that should occur in purchase of any note by said bank. Furthermore, the automobile dealers agree to furnish life insurance on the maker of notes or other obligations, according to the schedule of rate provided by said bank and adequate insurance coverage.

Section 362.170, RSMo 1949, reads, in part, as follows:

"A bank subject to the provisions of this chapter:

"1. Shall not directly or indirectly lend to any individual, partnership, corporation, or body politic, either by means of letter of credit, by acceptance of drafts or by discount or purchase of notes, bills of exchange, or other obligations of such individual, partnership, corporation or body politic an amount or amounts in the aggregate which will exceed fifteen per cent of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of one hundred thousand or over; twenty per cent of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of

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less than one hundred thousand and over seven thousand; and twenty-five per cent of the capital stock actually paid in and surplus fund of such bank is located elsewhere in the state, with the following exceptions:

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There is a possibility that such purchase of notes and other obligations mentioned in your request might exceed the maximum legal limits any bank may purchase, discount or loan money under and by virtue of Section 362.170, RSMo 1949. It appears to be a fair agreement and for the most part complies with the law. However, I believe it is possible that in complying with the terms of the proposed agreement, it may exceed in the aggregate 15%, or whatever percentage as may be determined by population of the city wherein said bank may be located, as provided by Section 362.170, supra, of capital stock actually paid and surplus fund of such bank. In such case there would be a violation of said statute. If such agreement could be written so as to fix a limitation of such purchases on loans to comply with the foregoing maximums required by law, and we believe it can be done, then the agreement would constitute a valid obligation under the laws of Missouri.

CONCLUSION

It is therefore the opinion of this department that this agreement might possibly violate the provisions of Section 362.170, supra, especially with respect to the maximum limit to which a bank may purchase, discount or loan money thereunder, if this agreement could be amended so as to confine the maximum limit which such banks may discount or loan money, to that provided under Section 362.170, supra, then we are of the opinion the agreement would be valid, otherwise it does not comply with the law and is invalid.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Aubrey R. Hammett, Jr.

Yours very truly,

ARH, Jr.:vlwida

JOHN M. DALTON
Attorney General