

BANKS AND BANKING: The words "another community" found in sections 362.325 and 363.520 RSMo 1959, relating to change in

location of an existing bank or trust company, do not refer to definite boundaries of political subdivisions, but refer to a community of people or interests, banking interests or banking facilities, and such fact issue is to be determined by employing procedures outlined in such statutes.

OPINION NO. 158

April 9, 1963



Honorable Robert B. Mackey  
Commissioner, Division of Finance  
Jefferson Building  
Jefferson City, Missouri

Dear Mr. Mackey:

This opinion is in answer to your inquiry of March 29, 1963, reading as follows:

"Section 362.325, RSMo., 1959, applicable to State chartered banks, and Section 363.520, RSMo., 1959, applicable to State chartered trust companies, treat of the amendment of Articles of Agreement in identical language as follows:

"..Provided, however, that if the change undertaken by any such (bank or trust company) in its articles of agreement shall provide for the relocation of such (bank or trust company) in another community, (then) the commissioner shall make or cause to be made an examination to ascertain whether the convenience and needs of such new community wherein such (bank or trust company) desires to locate are such as to justify and warrant the opening of such (bank or trust company) therein and whether the probable volume of business at such new location is sufficient to insure and maintain the solvency of such (bank or trust company) and the solvency of the then existing banks and trust companies at such location, without endangering the safety of any bank or

trust company in such locality as a place of deposit of public and private moneys, and, if the commissioner as a result of such examination be not satisfied in the particulars mentioned or either of them, he may refuse to issue the certificate applied for, in which event he shall forthwith give notice of such refusal to the (bank or trust company) applying for such certificate, which, if it so desires, may within ten days thereafter appeal from such refusal to the state banking board.'

"Section 362.020, RSMo., 1959, applicable to State chartered banks, and Section 363.030, RSMo., 1959, applicable to State chartered trust companies, both provide that original Articles of Agreement shall disclose 'the name of the city or town and county in this state in which the corporation is to be located'.

"This office desires to request your official opinion touching the meaning of the words 'another community' as found in Sections 362.325 and 363.520, RSMo., 1959."

A comparison of Sections 362.325 and 363.520, RSMo 1959, discloses that language you have quoted in your inquiry from such statutes is correct, except for the parenthetical wording which is used to demonstrate how such statutes may be read interchangeably when directing attention to such language.

We seek a meaning for the words "another community" as they are used in Sections 362.325 and 363.520, RSMo 1959, when a State chartered bank or trust company desires to change its location.

Pertinent to this inquiry is the following language from Michie On Banks And Banking, Permanent Edition, Volume 1, Chapter 2, Section 25:

"A statute authorizing an existing bank to change its articles of agreement in any way not inconsistent with the article relating to banks, was broad enough to include authorization of a change of

location, and prior to an amendment to that statute, the commissioner of finance had no discretionary authority to refuse to allow the change on the ground of the insufficiency of the probable volume of business at the new location". (Citing State v. Holt, 348 Mo. 982, 156 SW 2d 708).

The language you have quoted from Sections 362.325 and 363.520, RSMo 1959, came into the statutes by amendment in 1941 (Laws 1941, pp. 670, 674). No adjudicated cases in Missouri have been found disclosing what meaning should be given to the words "another community" when considering the right of a bank to relocate.

In the case of Upper Darby National Bank v. Myers, 124 A2d 116, 119, 386 Pa. 12, the Supreme Court of Pennsylvania was construing a statute which authorized a bank to establish a branch if the " \* \* city, borough or other community in which such branch is to be established is without adequate banking facilities \* \* \*". The Supreme Court of Pennsylvania spoke, in part as follows in its decision in 1956 (386 Pa. 12, l.c. 18):

"Appellant contends that the words 'other community' refer to a political subdivision and can only mean 'township', especially when taken in conjunction with §203 which refers to relocations within or without a city, borough or township in which a bank's principal place of business or branch is located. We do not agree with this contention which is based on the principle of a ejusdem generis and which appellant frankly admits is a narrow technical interpretation. The Legislature knew how to use the word 'township' whenever it so desired, as in §203. Community in its ordinary or popular meaning does not mean township or other political subdivision; it means an area in which there is a community of people or interests, such as in this case banking interests or banking facilities. In rural counties people rarely ever know where a

borough or township line begins or ends, and in making deposits or doing a banking business they rarely ever think of whether they are crossing a township or political line, nor does a bank in a rural community think of political lines when it seeks to serve a community."

In *Household Finance Corporation v. Gaffney*, 90 A2d 85, 90, 20 N.J. Super. 394, the Superior Court (Appellate Division) of New Jersey was considering an appeal from the decision of the Commissioner of Banking and Insurance of New Jersey denying an application for an additional license to conduct a small loan business. Facts in this case disclosed that Household Finance Corporation had one office at 28 West State Street in Trenton, and that its application called for a second office at 45 East State Street, "about 1-1/2 blocks away". The Commissioner denied the application because of the statutory requirement touching convenience and needs of the "community". In alluding to the contentions of Household Finance Corporation touching the proper meaning to be given the word "community", the Superior Court spoke as follows at 20 N.J. Super. 394, l.c. 405:

"Its contention that the Trenton 'community' could not be confined to the municipal boundaries finds support in the record and is correct. So is its observation that what the precise geographical area should be is a question of fact."

In defining the word "community" as the word is used in Missouri's laws relating to organization of school districts, and with particular reference to the petition to establish which must be signed by resident citizens of any community, the Supreme Court of Missouri, in the case of *State ex inf. Carnahan ex rel. Webb v. Jones*, 181 S.W. 50, 51, 266 Mo. 191, l.c. 196, spoke as follows:

"The word community in this act is not employed in any technical or strictly legal sense, but is a sort of synonym of 'neighborhood' or 'vicinity' (*Berkson v. Railroad*, 144 Mo. l.c. 220, 221) or may be said to mean the people who reside in a locality in more or less proximity. [*Keech v. Joplin*, 157 Cal. l.c. 11]. So

defined, a community may include several districts and parts of districts. There is no requirement that petitioners shall reside here or there in the community. That they are resident citizens of it is enough."

In State ex rel. Bank of Nashua v. Holt, 348 Mo. 982, 1.c. 988, 156 SW2d 708, the Supreme Court of Missouri was alluding to the amendment made in 1927 to what is now Section 362.040, RSMo 1959, and spoke as follows:

"Prior to this 1927 change in Section 7942, banking business was on the basis of free competition, with regulation as to certain practices only. By this 1927 change in Section 7942 the Legislature commenced to apply the principle of partial regulated monopoly to banking (at least in creating new banks) somewhat in the nature of regulated monopoly as applied to public utilities by the Public Service Commission Act. The 1941 amendment to Section 7973 definitely applies this principle to all banks." (Underscoring supplied.)

The 1941 amendment to Section 7973 referred to in the above quotation is the same language quoted in your opinion request from Sections 362.325 and 363.520, RSMo 1959.

#### CONCLUSION

It is the opinion of this office that the words "another community", contained in Sections 362.325 and 363.520, RSMo 1959, relating to change in location of an existing bank or trust company, do not refer to definite and described boundaries of political subdivisions but refer to a community of people or interests, banking interests or banking facilities, and such fact issue is to be determined by employing procedures outlined in such statutes.

Honorable Robert B. Mackey -6-

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

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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