

October 17, 1963

Opinion No. 267 answered  
by letter (O'Malley)

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



Dear Mr. Mackey:

This letter of advice is submitted in lieu of a formal opinion in answer to your inquiry of June 18, 1963, which reads, in part, as follows:

"However, we call attention to subsection (1) (b) of Section 363.260 RSMo., 1959, which seems to apply here. The first clause thereof permits the total liabilities of a corporation subject to the jurisdiction of the Missouri Public Service Commission to equal 25% of the capital stock and surplus of the trust company. The second clause of this subsection provides that the total liabilities to a trust company of any other corporation may equal 25% of the capital stock and surplus of the trust company. These two clauses are separated by a semi-colon. Following the second clause and separated by a semi-colon is a proviso requiring two-fifths of such total liabilities to be secured as provided therein.

"The problem is whether the proviso as to security appertains to the first clause as well as the second clause of this subsection or whether it is intended only to restrict the 25% limit

imposed upon loans to or liabilities of 'any other corporation'.

"We would appreciate being advised of your opinion with respect to the construction which should be placed upon this subsection, that is, whether loans to a qualified public utility may equal 25% of the capital and surplus on an unsecured basis or whether a percentage of the 25% limitation must be secured in these loans to this public utility."

Subsection (1), (b) of Section 363.260, RSMo 1959, as amended by Senate Bill No. 194, effective October 13, 1963, provides:

"(b) The total liability to such trust company of any foreign nation or of any railroad corporation or of a corporation subject to the jurisdiction of a public service commission of this state, may equal but not exceed twenty-five per cent of the capital stock actually paid in and surplus fund of such trust company; and the total liabilities to such trust company of any individual, partnership, or of any other corporation may equal but not exceed twenty-five per cent of the capital stock actually paid in and surplus fund of such trust company, provided, that at least two-fifths of such total liabilities, if the trust company is located in a city having a population of one hundred thousand or over, and at least one-fifth of such total liabilities, if the trust company is located in a city having a population of less than one hundred thousand and over seven thousand, are upon commercial or business paper actually owned by the person negotiating the same to such trust company and are indorsed by such person

without limitations, or are secured by collateral security having an ascertained market value of at least fifteen per cent more than the amount of the liabilities so secured."

It is readily apparent that subsection (b), quoted above, is composed of two independent clauses separated by a semicolon with the second clause being followed by a proviso. In *Supply Company v. Smith*, 182 Mo. App. 212, l. c. 219, 167 SW 649, the St. Louis Court of Appeals spoke as follows:

"It is also a rule of statutory construction that a proviso should be construed with reference to the immediate preceding parts of the clause to which it is attached."

In *State ex rel. v. St. Louis*, 174 Mo. 125, l. c. 145, 73 SW 623, the Supreme Court of Missouri quoted approvingly from the *American and English Encyclopedia of Law* (1 Ed.), in part, as follows:

"A proviso is something engrafted upon an enactment, and is used for the purpose of taking special cases out of the general act and providing specially for them. \* \* \* The proviso should be confined to what immediately precedes, unless a contrary intent clearly appears; and should be construed with the section with which it is connected. This rule is not, however, absolute, and if the context requires, the proviso may be construed as a limitation extending over more than what immediately precedes, or may amount to an independent enactment."

The only change in subsection (1), (b) of Section 363.260, RSMo 1959, by enactment of Senate Bill No. 194 of the 72nd General Assembly, effective October 13, 1963, was to place a

Honorable Robert B. Mackey - 4 -

comma where a semicolon had appeared immediately preceding the word "provided" contained in the second clause of subsection (b). Such change emphasizes the two independent clauses contained in the subsection and leaves little doubt that the proviso is intended to apply only to language immediately preceding the proviso and forming an independent clause.

In application of the rules of statutory construction referred to herein, you are advised that the "proviso" found in subsection (1), (b) of Section 363.260, RSMo 1959, as amended by Senate Bill No. 194, is intended to be a restriction applicable only to the second clause found in such subsection.

Yours very truly,

---

THOMAS F. EAGLETON  
Attorney General

JLO'M:sr