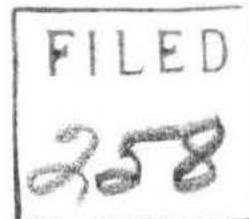


BANKS: State Chartered Banks have no authority to purchase stock in an Industrial Development Corporation.

September 9, 1964

Opinion No. 258

Honorable Gerald R. Massie  
Acting Director  
Division of Commerce and  
Industrial Development  
Jefferson Building  
Jefferson City, Missouri



Dear Mr. Massie:

This opinion is in answer to a recent inquiry of Mr. Lawrence A. Schneider posing the following question:

"If a local bank wishes to purchase stock in the local Industrial Development Corporation, is this permissible under the statutes of Missouri and if so, to what extent may they invest in such a transaction?"

The general rule of law on this subject is found at 9 C.J.S., Banks and Banking, § 167, reading as follows:

"Although in some jurisdictions, under the statutes therein, banks are authorized to purchase, invest in, and sell stocks of corporations, as a general rule, banks are denied the power to purchase, acquire, or deal in the stock of other corporations, except where it is necessary for the bank to purchase such stock to enable it to procure services necessary or beneficial to it in carrying on its business, or where the power is given by express enactment."

In seeking express statutory directive in this matter, we search the provisions of Section 362.105, RSMo 1959, outlining the "rights and powers" of State chartered banks. This statute now contains eight separately numbered subparagraphs. Subparagraph (1) of the statute, except the proviso therein prohibiting branch banking is not materially different than Section 2745, RSMo 1889, which was mentioned in the following language from *City of Goodland v. Bank*, 74 Mo. App. 365, l.c. 371:

"Applying these rules of construction to section 2745, defining the rights and powers of the banking corporations authorized by other sections of said article 7, chapter 42, Revised Statutes, and it will be seen that neither this section nor the two sections previously herein referred to expressly or by implication authorized the defendant to subscribe for or purchase as an investment the said shares of stock in the defunct bank."

*City of Goodland v. Bank*, cited above, was ruled in 1898 and is cited approvingly in 1906 by the Supreme Court of Missouri in the case of *State ex rel. v. People's United States Bank*, 197 Mo. 574, l.c. 600, where the Court spoke as follows:

"It was ascertained by the Secretary of State that defendant bank had invested some of its funds in the stock of other corporations, and it was pointed out that this, by necessary implication, was in violation of section 1276, Revised Statutes 1899--the general rule of law being that 'a corporation has no power to subscribe for or purchase shares of stock in another corporation, unless such power is expressly granted, or unless the nature of the corporation and the circumstances

under which the stock is acquired are such as to render the transaction a necessary or reasonable means of carrying out the object for which it was created, or of accomplishing some purpose which is authorized by its charter.' [1 Clark & Marshall on Private Corporations, sec. 193, p. 523; City of Goodland v. Bank, 74 Mo. App. 365.]"

The case law announced in the cases of City of Goodland v. Bank, and State ex rel. v. People's United States Bank, both cited supra, has not been changed, but the legislative policy in Missouri in relation to this subject has been broadened from time to time as evidenced by subparagraphs (3), (4), (5) and (6) of our present statute, Section 362.105, RSMo 1959. Such amendments to the statute authorize a bank to purchase and hold capital stock necessary to qualify for membership in a federal reserve bank, to acquire stock in the Federal Deposit Insurance Corporation, a bank service corporation, and to acquire stock in any safe-deposit company organized and existing under the laws of the State of Missouri and doing business on premises owned or leased by the bank. In viewing such legislative action, it may be concluded that in those particulars covered by the amendments to Section 362.105, RSMo 1959, referred to above, the legislature has determined, as a matter of public policy, that power to invest in such authorized capital stocks will enable banks to procure services necessary or beneficial to carrying on the banking business. In addition, Section 362.173, RSMo 1959, specifically authorizes state chartered banks to invest in the capital stock of small business investment companies organized under the Small Business Investment Act of 1958. It must be concluded that since no legislative expression has been directed to a state chartered bank's authority to purchase stock in an Industrial Development Corporation, such authority does not exist in a state chartered bank.

Honorable Gerald R. Massie

CONCLUSION

It is the opinion of this office that state chartered banks in Missouri are without authority to purchase stock in an Industrial Development Corporation.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Thomas E. Eichhorst.

Very truly yours,

  
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THOMAS F. EAGLETON  
Attorney General