

COMMISSIONER OF FINANCE: The Commissioner of Finance may process BANK APPLICATIONS: first either the bank application first received or the application first completed. He may exercise his discretion as to which will be processed first without prejudice to either party.

OPINION NO. 432 (1967)
101 (1968)

January 11, 1968

Honorable C. W. Culley
Commissioner of Finance
Jefferson Building
Jefferson City, Missouri



Dear Commissioner Culley:

This is in response to your letter of November 1, 1967, requesting an opinion on the following question:

Shall the Commissioner of Finance of the State of Missouri, acting under his statutory authority, process two applications for bank charters from the same geographical area so that the application first filed, but which was not fully completed when filed has precedence; or, shall he process them so that the application filed second, but which was fully completed when filed, has precedence?

The general banking law of Missouri which was in force prior to October 13, 1967, is found in Chapter 362, RSMo 1959. Sections 362.015 to 362.040 set forth the procedure which must be followed by those who wish to obtain a bank charter. In general terms, those sections require that an application be filed with the Commissioner of Finance who must make a full investigation of the matter and thereafter approve the application before a charter will be granted. The investigatory duties of the Commissioner are spelled out in Section 362.030, RSMo 1959. After receiving a copy of the proposed bank's articles of agreement, the Commissioner of Finance shall:

" * * * cause an examination to be made to ascertain whether the requisite capital of such bank has been subscribed in good faith and paid in actual cash and is ready for use in the transaction of business of the proposed bank, and whether the character, responsibility and general fitness of the

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persons named in the articles of agreement are such as to command confidence and warrant belief that the business of the proposed corporation will be conducted honestly and efficiently in accordance with the intent and purpose of this chapter; and if the convenience and needs of the community to be served justify and warrant the opening of such bank therein, and if the probable volume of business in such locality is sufficient to insure and maintain the solvency of the then existing banks and trust companies in the locality, without endangering the safety of any bank in the locality as a place of deposit of public and private moneys."

After making his examination, the Commissioner may approve the application and grant a charter (Section 362.035) or he may not approve the application or grant a charter (Section 362.040), depending upon whether or not he is satisfied with the results of his examination. Those who have an application turned down by the Commissioner may appeal his decision to the State Banking Board. Section 362.094, RSMo 1959. However, it is clear that the Commissioner is granted great discretionary power to approve or disapprove bank charter applications subject to the review of the State Banking Board.

Chapter 362 does not require the Commissioner to process bank charter applications in any particular way. Section 362.030 sets up the various standards and guidelines which he must follow in carrying out his investigation as to the fitness of a particular charter applicant and these standards serve as a basis for the reasonable exercise of his discretion in approving or disapproving. Certainly, in view of this section, it is reasonable for the Commissioner to require those applying for a charter to do more than file a bare application. Normally, he requires the applicant, either before or after filing, to furnish him with information and data which supports the application and aids the Commissioner in his examination. It is axiomatic that an application cannot be processed and approved until it has been fully completed. Something more than a mere filing of the application is necessary to get final approval.

The statutes do not spell out any particular order that the Commissioner must follow in processing the applications that he receives. Neither do we know of any cases which have ruled on this point. A general rule of statutory construction holds that a statute must be given a reasonable interpretation. Since the statute in

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question is silent on the point at bar, we shall look at it in a reasonable perspective. If two similar applications are received by the Commissioner of Finance, it is reasonable for him to consider first the application which was first received. However, in light of the Commissioner's duty under Section 362.030, it is just as reasonable for him to process an application first which is complete and ready for his consideration even though it was filed subsequent in time to an incomplete application.

A statutory duty is ministerial when the statute prescribes and defines exactly what, when and how something is to be handled. If a statute contemplates that the particular method by which something is to be done shall be left to the judgment of the one charged with carrying out the duty, it is discretionary in nature. Where the statute is completely silent as to which application shall be processed first, it is not ministerial and can only be discretionary.

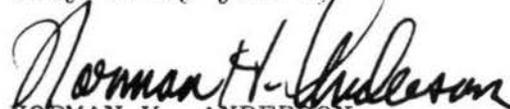
The Commissioner of Finance has discretionary power given to him in several areas of his job. In Section 361.240, he is expressly given broad discretionary power: "In any case in which this chapter makes the approval of the Commissioner a condition precedent to the doing of any act, unless otherwise provided by law, it shall lie within his sound discretion to grant or refuse his approval." (Emphasis added.) Although this section refers to Chapter 361, it is applicable to Chapter 362 as well, because Section 361.020 charges the Division of Finance with the responsibility of executing the laws relating to banks (Chapter 362). An important part of the banking law, of course, is the approval or rejection of bank charter applications under Sections 362.015 to 362.040. Section 361.240 seems to give express discretionary power to the Commissioner of Finance in addition to the implied discretionary authority inherent in Sections 362.015 to 362.040. The order in which two applications shall be processed is, therefore, a matter which is within the ambit of the Commissioner's discretionary authority.

CONCLUSION

It is our opinion that the Commissioner of Finance may process first either the application first received or the application first completed. Either approach is reasonable under the applicable statutes and the Commissioner may exercise his discretion as to which will be processed first without prejudice to either party.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary G. Sprick.

Very truly yours,


NORMAN H. ANDERSON
Attorney General