

December 9, 1971

OPINION LETTER NO. 455
Answer by letter-C.A. Blackmar



Mr. H. Duane Pemberton
Commissioner of Finance
Division of Finance
P. O. Box 716
Jefferson City, Missouri 65101

Dear Mr. Pemberton:

This is in response to your request for an opinion on the question of whether the articles of agreement of a proposed new bank, which has filed its articles of agreement with the Commissioner of Finance but has not been granted a certificate of incorporation, may amend its articles of agreement by following the procedure set out in Section 362.325, RSMo 1969. Section 362.325, RSMo, provides:

"Any bank or trust company may, at any time, . . . change its articles of agreement . . . with the consent of the persons holding a majority of the stock of the bank or trust company, which consent shall be obtained at an annual meeting or at a special meeting of the shareholders called for that purpose."

The section then goes on to describe the mechanics by which an amendment is adopted by a vote of the shareholders.

We are of the opinion that that section is not applicable to a proposed bank not yet in existence by virtue of the definition of the word "bank" contained in Section 362.010, RSMo 1969, which applies under the provisions of Section 362.010, RSMo, to the term "bank" as it is used in Section 362.325, RSMo. The definition for the word "bank" is as follows:

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"'Bank' means any corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether the deposit is made subject to check, or is evidenced by a certificate of deposit, a pass book, a note, a receipt, or other writing;"

Inasmuch as a proposed bank which has not been granted a certificate of incorporation by the Commissioner of Finance may not solicit, receive, or accept money or its equivalent on deposit, the word "bank" in Section 362.325, RSMo, has no application to a proposed bank.

It is the opinion of this office that if the organizers of a proposed bank wish to amend the articles of agreement, the proper procedure is for the organizers to withdraw the articles of agreement filed with the Commissioner of Finance and then to submit to him new articles of agreement signed by each person who is to be an incorporator of the proposed bank under the new articles which are submitted.

Yours very truly,

JOHN C. DANFORTH
Attorney General