

INFORMATION: Section 5429, subdivision 1, Section 4119--  
Approved.

May 27, 1933 <sup>62</sup>



Hon. Orin J. Adams  
Prosecuting Attorney  
Caldwell County  
Kingston, Missouri

Dear Sir:

We wish to acknowledge your letter of April 26th, 1933,  
which is as follows:

"The opinion of your department is re-  
spectfully requested, as to whether the  
enclosed information, which is a sub-  
stitute to a grand jury indictment, suffic-  
iently charges an offense under Section  
5429, R. S. 1929, relating to restrictions  
on loans made by officers of a trust  
company. The punishment provided is set  
out in Section 4119.

The only cases that I can find on the  
subject are as follows:

State vs. Settle, 46 S. W. (2nd)  
882.

State v. Lloyd, 7 S. W. (2nd) 344.

Brown v. Stotts City Bank, 38 S. W.  
(2nd) 722."

The copy of information filed in your court appended to  
your letter, is based on statute 5429, subdivision B thereof,  
R. S. Mo. 1929. The punishment provided for such offense being  
found in Section 4119 R. S. Mo. 1929.

The information seems to be well drawn and apparently  
it meets the requirements of the statute as to both form and  
substance.

Section 4119 R. S. No. 1929, fixes the punishment, and you will notice that the punishment aimed at in this section is for the making or concurring in the making of loans by officers or directors to individuals or others.

The informations in the cases of State v. Lloyd, 7 S. W. (2nd) 344, and State v. Settle, 46 S. W. (2nd) 882, may be distinguished from the one drawn by you in that the information drawn in the Lloyd Case the court held was based on Section 5357, subdivision 8. The court reached the conclusion that the felony statute did not cover offenses against subdivision 8. Section 5357 relates to banks and Section 5439 to trust companies. Both sections are similar in character and purpose.

In the Settle case the court in holding the information bad said:

"The accused should know whether he is charged with making an excessive loan either directly or indirectly, since the statute denounces both methods. If the excessive loan was made by means of a promissory note, defendant should be particularly advised of the charge in the information. And in like manner, if any other method of lending was used. It is a matter of common knowledge that banks lend money in a variety of ways." \* \* \*

And further:

"\* \* \* It may be assumed that the prosecuting attorney in drawing the information tried to steer a safe course between the rock of Scylla and the whirlpool of Charybdis." \* \* \*

The court also made this observation at page 885:

"\* \* \* The information is not attacked upon the ground that it does not negative the exceptions to subdivision 1. But the six exceptions may be epitomized thus: etc." \* \* \*

Hon. Orin J. Adams.

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May 22, 1933.

We do not believe the court means that the information must negative the exceptions but call them to attention in view of its previous statement at page 884, namely:

"The law of this case is to be found in one section of the statutes and in part of another. Both are crudely drawn. They denounce sets in the disjunctive and the felony statute described the offense only by reference to the other statute which is of a civil nature." \* \* \*

We suggest it would be good pleading to set out the fact that W. S. Bathgate is an individual, so as to further contra-distinguish subdivision 1 and 8.

Yours very truly,

JAMES L. HORNOSTEL,  
Assistant Attorney General.

APPROVED \_\_\_\_\_  
Attorney General.

J H:MM