STATE:
BANK:
CONSTITUTIONAL AMENDMENT: Effective date of said constitutional amendment No. 3, approved by the voters on November 6, 1956, is thirty days after November 6, 1956. Surplus funds referred to therein may be placed in "Time Deposit - Open Account."

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December 7 1956

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Honorable G. Hubert Bates
State Treasurer
State of Missouri
Jefferson City, Missouri

Dear Mr. Bates:

This will acknowledge receipt of your request for an opinion which reads:

> "Since it is apparent that Amendment No. 3 received the majority of votes in the General Election held on November 6, 1956, and in order that I may comply with the provisions of said Amendment, I would like to have a legal opinion from your office in answer to the following questions:
>
> 1. On what date will this Amendment to the Constitution become effective?
>
> 2. If the effective date is during my term of office would any liability exist against me as State Treasurer if I should proceed to place surplus State funds on 'Time Deposit - Open Account'?
>
> "Since my term of office is about to expire, I would appreciate an early reply to this inquiry."

Constitutional Amendment No. 3 is the same as Joint and Concurrent Resolution No. 1 adopted by the 68th General Assembly (Special Session) and was submitted to the voters and approved on November 6, 1956. This had the effect of repealing Section 15, Article IV, Constitution of Missouri, and reads:

> "Section 15. The state treasurer shall be custodian of all state funds. All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the

> state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. The state treasurer shall determine by the exercise of his best judgment the amount of state moneys that are not needed for current operating expenses of the state government and shall place all such moneys not needed for payment of the current operating expenses of the state government on time deposit, bearing interest, in banking institutions in this state selected by the state treasurer and approved by the governor and state auditor or in short term United States government obligations maturing and becoming payable one year or less from the date of issue or in other United States obligations maturing and becoming payable not more than one year from the date of purchase. The investment and deposit of such funds shall be subject to such restrictions and requirements as may be prescribed by law. Banking institutions in which state funds are deposited shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping and payment of the deposits and interest thereon pursuant to deposit agreements made with the state treasurer pursuant to law. No duty shall be imposed on the state treasurer by law which is not related to the receipt, investment, custody and disbursement of state funds."

Section 15, Article IV, Constitution of Missouri, 1945, prior to the adoption of the foregoing amendment read:

> "All revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury, and all interest, income and returns therefrom shall belong to the state. Immediately on receipt thereof the state treasurer shall deposit all moneys in the state treasury to the credit of the state in banking institutions selected by him and approved by the governor and state auditor, and he shall hold them for the benefit of the respective funds to which they belong and disburse them as provided by law. Such institutions shall give security satisfactory to the governor, state auditor and state treasurer for the safekeeping

> and payment of the deposits on demand of the state treasurer authorized by warrants of the state auditor. No duty shall be imposed on the state treasurer by law which is not related to the receipt, custody and disbursement of state funds."

You first inquire upon what date will the newly adopted amendment become effective. There is nothing in the amendment that indicates that it was the legislative intent that the effective date of said amendment shall be counter to the present constitutional amendment providing for the effective date of all amendments proposed by the General Assembly namely, Section 2(b) Article XII, Constitution of Missouri, which reads:

> "All amendments proposed by the General Assembly or by the initiative shall be submitted to the electors for their approval or rejection by official ballot title as may be provided by law, on a separate ballot without party designation, at the next general election, or at a special election called by the governor prior thereto, at which he may submit any of the amendments. No such proposed amendment shall contain more than one amended and revised article of this Constitution, or one new article which shall not contain more than one subject and matters properly connected therewith. If possible, each proposed amendment shall be published once a week for two consecutive weeks in two newspapers of different political faith in each county, the last publication to be not more than thirty nor less than fifteen days next preceding the election. If there be but one newspaper in any county, publication for four consecutive weeks shall be made. <u>If a majority of the votes cast thereon is in favor of any amendment, the same shall take effect at the end of thirty days after the election.</u> More than one amendment at the same election shall be so submitted as to enable the electors to vote on each amendment separately."
>
> (Underscoring ours.)

The next to last sentence in the foregoing amendment that we have underscored clearly fixes the effective date of any such amendment, which is, that it shall take effect at the end of thirty days after the election. The election was held on November 6, 1956, therefore, in view of the foregoing constitutional amendment the effective date of said amendment will be thirty days after November 6, 1956.

It now becomes necessary to determine if said constitutional amendment adopted on November 6, 1956, is self-executing or does it require an enabling act of the Legislature to carry out the provisions thereof.

The well-established and controlling principle of law in determining if a constitutional amendment is self-executing, is whether said amendment can become effective without the aid of legislation. In State ex inf. McKittrick v. Wymore, 119 S. W. 2d 941, l.c. 947, 343 Mo. 98, 119 A.L.R. 710, the Supreme Court of Missouri, said:

> "* * * The rule is stated in State ex inf. Norman v. Ellis, 325 Mo. 154, loc. cit. 160, 28 S.W. 2d, 363, loc. cit. 365, as follows:
>
> "'"It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * *
>
> "'"Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed." * * *
>
> "'"A Constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficacy and operation on the legislative will."' 12 C. J. pp. 729, 730."

In State v. Smith, 194 S.W. 2d 302, l.c. 304, the court also approved said rule and said:

> "[2,3] We are of the opinion that the mooted constitutional provision, the text of which is set forth in the margin, is not subject to the foregoing construction. 'One of the recognized rules is that a constitutional provision is not self-executing when it merely lays down general principles, but that it is self-executing if it supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment. * * * Another way of stating this general, governing principle is that a constitutional provision is self-executing if there is nothing to be done by

> the legislature to put it in operation. In other words, it must be regarded as self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the Constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.' * * *"

In State v. Smith, supra, l.c. 305 and 306, the court also had this to say about said constitutional amendment being self-executing:

> "* * * These are subjects which undoubtedly may be dealt with by the legislature. 'Minor details may be left for the legislature without impairing the self-executing nature of constitutional provisions.' 11 Am. Jur. Constitutional Law, § 73, p. 691. But, as pointed out in Cooley's Constitutional Limitations, 7th Ed., 122 'Perhaps even in such cases [certain self-executing provisions] legislation may be desirable * * *; but all such legislation must be subordinate to the constitutional provision, and in furtherance of its purposes, and must not in any particular attempt to narrow or embarrass it.' The constitutional grant to issue and sell revenue bonds carries with it by implication such other necessary powers as are needed to carry the granted authority into effect. The constitution being silent on the subject of the provisions to be recited in such bonds, and there being no statutory limitation applicable to the challenged provision, we think the city had the implied authority to prescribe, as one of the inducements to prospective holders, and thus favorably affect the value and marketability of the bonds, that any subsequent issue of like bonds should be junior and subordinate to the issue in question."

In State v. Smith, supra, the court approved the decision in State ex rel. Clark Co. v. Hackman, 280 Mo. 686, 218 S.W. 318, wherein the question arose as to whether a constitutional amendment was self-executing. The amendment for construction in that case granted power to counties to create certain debts for county purposes, when approved by a prescribed majority, however, said constitutional amendment provided no machinery for the election. The court held that it was sufficient in view of the fact that in holding said election they used the ordinary or usual machinery provided by law for expression of voters upon questions and, there-

fore, the constitutional amendment was self-executing.

In State v. Ellis, 28 S.W. 2d 363, l.c. 365, the court again announced the foregoing rule as to how to determine if a constitutional amendment is or is not self-executing.

See also Miller v. Wilson, 129 P. 2d 668, 670, 671, 59 Ariz. 403.

State ex rel. Stafford v. Fox Great Falls Theater Group, 132 P. 2d 689, 699, 700, 114 Mont. 52.

Certainly it is not difficult to comprehend the purpose of this amendment, it was to prevent the state's losing so much revenue in the form of interest on revenue placed in banks or banking institutions by the state treasurer. There is one particular sentence in the new amendment that it might be well to mention in determining if said constitutional amendment is or is not self-executing, namely: "* * * the investment and deposit of such funds shall be subject to such restrictions and requirements as may be prescribed by law."

In construing the foregoing sentence in said amendment, there is a rule of statutory construction applicable, namely, that generally in statutes the word "may" is permissive only, and the word "shall" is mandatory. See State ex inf. McKittrick v. Wymore, supra; Warrington v. Bobb, 56 S.W. 2d 835; State ex rel. and to the use of Dietrich, et al. v. Schade, 167 S.W. 2d 135.

Applying the following rule to the foregoing sentence we construe it to mean that such investments and deposits referred to shall be subject to any restrictions and requirements should the General Assembly choose to enact same, however, in the absence of any such legislation said provision is self-executing.

We believe this constitutional amendment adopted by the voters on November 6, 1956, sufficiently provides what shall be done with such revenue without the necessity or aid of any enabling legislation, even to the extent that such banking institutions wherein such state funds shall be deposited shall give satisfactory security to certain specified officials of the state, pursuant to deposit agreements made with the state treasurer, pursuant to law.

The General Assembly heretofore has enacted laws that may be invoked for executing such agreements, etc. Sec. 30.250, MoRS 1949, provides for a contract with the depositary. Furthermore, Sec. 30.270, MoRS 1949, Cum. Supp. 1955, specifically provides the kind and character of security for funds deposited by the state treasurer.

Section 30.250, supra, reads:

"1. The state treasurer shall enter into a written contract in quadruplicate with each depositary setting forth the conditions and terms upon which the funds of the state are deposited therewith and containing among its provisions and conditions the following:

(1) The amount of the moneys of the state to be entrusted to each depositary;

(2) The time such agreement shall continue with the right reserved to each the state treasurer and the state depositary to terminate the agreement at any time upon giving thirty days' notice to the other party of his or its intention to do so;

(3) The rate of interest to be paid by the depositary to the state whenever banks and banking institutions should be permitted to pay interest or a bonus on state deposits;

(4) That such depositary shall safely keep said deposits and shall pay off the same only upon the written demand of the state treasurer in the form of checks or drafts, when he shall be authorized by warrant of the state auditor;

(5) That such depositary shall secure the state funds with the amount and character of securities provided for in Section 30.240 of this act, such securities to be held by the state treasurer in the vaults of the state, or in the vaults of such bank, trust companies or safe depositaries as the state treasurer may designate with the consent of the governor and the state auditor, and at the expense of the depositary;

(6) That no item of security deposited by a depositary under the terms of the contract shall be withdrawn without the written consent of the governor, state auditor and state treasurer;

(7) That the depositary shall, at the end of each month, render to the state treasurer a statement in triplicate showing the daily balances or amount of money held by it during the month and the amount of accrued interest thereon, if any;

> (8) That in the event the depositary shall default in any manner in performing any of the terms and conditions of the contract, or shall fail to safely keep the funds of the state deposited with it, the state treasurer shall be authorized forthwith without notice, advertisement or demand, and at public or private sale to convert into money the securities deposited, or as many of them as may be necessary to pay the whole amount of the state deposits in such depositary.
>
> "2. Upon the execution of such contracts the state treasurer shall deliver a copy thereof to the state auditor, a copy thereof to the governor, shall file another with the secretary of state, and shall retain the remaining copy in his own office."

All the conditions hereinabove quoted in Section 30.250, supra, should be a part of such agreement with the exception of subsection 4 under paragraph 1, which is in conflict with the provisions of the new constitutional amendment, in that the law no longer requires demand deposits of moneys not needed for current operating expenses but now requires that moneys not needed for current operating expenses of the state government shall be placed on time deposit or in short term United States government obligations.

Surely the 68th General Assembly in adopting Joint and Concurrent resolution No. 1, which is the same constitutional amendment adopted on November 6, 1956, and referred to in your request, in referring to "time deposit, bearing interest" had in mind the definition of time deposit as contained in Section 362.010, Subsection 14 and Section 363.010, Subsection 13, V.A.M.S. Both provisions read:

> "When used in this chapter, the term:
>
> * * * * * * * *
>
> "'Time deposits' means all deposits, the payment of which cannot legally be required within thirty days."

There is a well established rule of construction that laws are presumed to be drafted with full knowledge of all existing ones on the subject. Smith v. Pettis County, 136 S.W. 2d 282, 345 Mo. 839; Howlett v. Social Security Comm. 149 S.W. 2d 806, 347 Mo. 784, certified from 146 S.W. 2d 94, 236 Mo. App. 231.

Honorable G. Hubert Bates

We understand that "Time Deposit - Open Account" means an account where notice of not less than thirty days in advance of withdrawal must be given by the depositor.

Therefore, we see no reason why said state revenue permitted to be deposited under said constitutional amendment cannot be deposited in "Time Deposit - Open Account."

CONCLUSION

Therefore, it is the opinion of this department:

1) That the effective date of said constitutional amendment is thirty days after November 6, 1956.

2) That such surplus funds may be placed in "Time Deposit - Open Account."

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

ARH/mw/bi