BANKS:
CORPORATIONS: Sec. 362.105, RSMo 1949, is authority for a state chartered bank in Missouri to acquire by purchase the capital stock of a corporation organized to construct a bank building to be leased to the state chartered bank for its banking facilities.

April 8, 1959

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Honorable G. H. Bates,
Commissioner,
Division of Finance,
Jefferson Building,
Jefferson City, Missouri.

Dear Mr. Bates:

This opinion is in answer to your request of March 10, 1959, in which you desire an opinion on the question we restate in the following language:

> "May a state chartered bank acquire by purchase the capital stock of a corporation organized to construct a bank building to be leased to the state chartered bank for its banking facilities?

The Missouri Constitution of 1945 contains no express restrictions on banking corporations, as such, however, under Article XI, applying to corporations generally, there is a restriction on the holding of real estate by corporations which is applicable to banking corporations. We quote from Article XI, Section 5, in part:

> "Sec.5. Prohibition of ultra vires acts - limitations on holding of real estate.-- No corporation shall engage in business other than that expressly authorized in its charter or by law, nor shall it hold any real estate except such as is necessary and proper for carrying on its legitimate business; * * * "

It can readily be seen that our Constitution expressly allows a corporation to hold title to real estate to enable it to carry on its purposes which would, of course, include ownership of the building housing its banking offices.

This premise is specifically confirmed by statute. Section 362.105, RSMo 1949, captioned "Rights and powers of banks -." In part, this provision reads:

"Every bank shall be authorized and empowered

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"(6) To purchase, hold or convey real property for the following purposes:

"(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business, from portions of which not required for its own use a revenue may be derived; * * * "

Restrictions contained in Section 362.165, RSMo 1949, on holding real estate by banks specifically exempts real estate held for the purpose of housing its regular banking operations.

Thus, it is plain that there is clearly no prohibition against a bank holding real estate directly to house its banking quarters. Accordingly, we next pass to the question of possible prohibitions against this purpose being effected indirectly by the means of the wholly owned subsidiary.

Section 362.105, RSMo 1949, which has been quoted in part, supra, and which grants the general authorized powers of banks, contains no direct prohibition against a bank purchasing stock of corporations but, to the contrary - in subsections (3), (4) and (5) of that section - provides that a bank may hold stock in a federal reserve bank, the Federal Deposit Insurance Corporation and certain safety deposit companies, respectively. Other statutes which provide for the acquisition of certain approved stock by banks are: Section 362.140, RSMo 1949, which provides that Missouri banks may invest in stock of other banks for the purpose of establishing foreign branches; Section 362.160, RSMo 1949, to deal in and develop foreign exchange.

These, then, are the only sections of the Missouri statutes specifically allowing purchase of stock by banks.

There has been a clear legislative pronouncement against banks entering into fields other than banking, as embodied in Section 362.200, RSMo 1949, which provides:

> "No corporation now existing, nor any hereafter organized under any law of this state, whether general or special, as a bank, or to carry on a banking business, shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants; provided, that it may sell all kinds of property which may come into its possession as collateral security for loans or in the ordinary collection of debts."

Note that while Section 362.200, RSMo 1949, does not purport to affect the purchase of stock by banks, its implication, considering it with the other sections noted, supra, which provide that banks may acquire certain stocks by clear public policy in favor of their acquisition, is that stock may be acquired for certain recognized policies which effectuate the bank's business or public policy. It may not purchase stock for the purpose of speculation or actively engaging in activities other than banking. This, of course, would also prohibit banks from purchasing stock in a corporation whose general purpose it was to deal in real estate.

This philosophy is reflected in the Missouri decisions on the subject of acquisition of stock of other enterprises by banks. See City of Goodland v. Bank of Darlington, 74 Mo. App. 365, wherein it was stated concerning acquisition of stock in other enterprises by banks, l.c. 369:

> " * * * It is a matter of common knowledge of which we may take notice, that banks of deposit or discount or of both deposit and discount organized under the statute of this state in the course of their regular business often take as collateral security for loans made by them the stocks of other corporations the absolute title of which they are frequently compelled to acquire in order to protect themselves; and in this way their funds become invested in such stocks. The statute has been made sufficiently comprehensive in its terms to

> enable such banks, in making their official statements, to include such stocks among their resources. But we do not understand that this or any other statute authorizes any banking corporation organized under the statute of this state to subscribe for the stock of any other corporation or to primarily invest its funds therein. * * *"

Since this is a question of original impression in Missouri and there is no direct Missouri authority available on the question of acquisition of stock to further the purchase or lease of a bank's business quarters, we have examined other authorities to ascertain whether such practice has ever been upheld.

Decisions under the National Bank Act indicate that national banks have been allowed to hold real estate through a subsidiary corporation. See Nashville Fourth National Bank v. Stahlman, 1915, 132 Tenn. 367, 178 S.W. 942, L.R.A. 1916A, 568, quoted infra.

Likewise, national banks have the power to lease office facilities. It was said in Brown v. Schleier, Colo. 1932, 118 Fed. 981, at page 983, 55 CCA 475, affirmed 24 S. Ct. 558, 194 U.S. 18, 48 L. Ed. 854:

> " * * * That a national bank may purchase a lot of land and erect such a building thereon as it needs for the accommodation of its business admits of no controversy under the language of the statute, and we perceive no reason why it may not likewise lease property for a term of years and agree with the lessor to construct such a building as it desires, provided, always, that it acts in good faith, solely with a view of obtaining an eligible location, and not with a view of investing its funds in real property or embarking them in speculations in real estate. Nor do we perceive any reason why a national bank, when it purchases or leases property for the erection of a banking house, should be compelled to use it exclusively for banking purposes. If the land which it purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other landowners of improving it in

> a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive. There is nothing, we think, in the national bank act, when rightly construed, which precludes national banks, so long as they act in good faith, from pursuing the policy above outlined. * * *"

All of the above cases were decided under that portion of Section 29 of Title 12, U.S.C.A., reading as follows:

> "A national banking association may purchase, hold, and convey real estate for the following purposes, and for no others:
>
> "First. Such as shall be necessary for its accommodation in the transaction of its business."

The Fourth National Bank v. Stahlman, noted supra, is a leading case on the question of a bank controlling its real property through investment in a corporation for that purpose. We now quote from the majority opinion of that case, 178 S.W. 942, l.c. 946, 947:

> "The proposition is undisputed that one corporation cannot invest its money in the stocks of another corporation, as a general proposition, but this is on the ground that it is unlawful as tending toward monopoly, or as being speculative and outside the scope and purpose of its organization, and not permitted as a matter of public policy.
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> "The object of the restrictions on a national bank to hold real estate or to become interested therein is to keep the capital of the bank flowing in daily channels of commerce; to deter it from engaging in hazardous real estate speculations; and to prevent the accumulations of large masses of such property in its hands to be held as it were in mortmain. The intent, not the letter, of the statute, constitutes the law.
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> * * * *

"The bank could have built an office building in order to provide a banking home; why could it not effect the same purpose by expending a small fraction of the necessary money, paying a reasonable rental thereafter? Suppose it had built the entire structure. It appears that the investment has not paid dividends, and the stock is quoted at only about 50 cents on the market. It did a more businesslike thing. It conserved its resources for doing a banking business instead of embarking in a course of extravagant building.

* * * *

"A national bank cannot buy real estate not needed in its banking business because the statute creating it has not permitted, on grounds of public policy, so as to confine its operations within the channels so much needed in the world of finance, and to render it at all times a purely banking institution. No reason has been suggested, and we believe none can be, why a national bank should not be permitted to own a small minority of stock in a building concern in order that it may better its own condition and render it a greater institution for the purposes of its creation. The reasons back of those cases cited by appellant, holding the acts of banks and other institutions ultra vires, are wholly wanting. This stock was taken as a business measure to get the best banking house possible, in the most reasonable way, as seen by its officials.

"If a national bank can buy expensive real estate in a banking district, where real estate is costly, and then, in order to so use its property as to make it a paying proposition instead of a losing one, as it can clearly do under the well-settled Federal authorities, we see no reason why its officials may not be permitted a reasonable discretion in doing a lesser act, to take reasonable stock to get a desirable banking home. If it may build or lease a structure for that purpose, why may it not take a smaller interest, such as undivided interest, or subscribe for stock, in order to reach the same result?

> "We therefore conclude that the chancellor did not err in holding that the contract of Stahlman to purchase this $45,000 of Mecklenburg stock was not ultra vires the bank, illegal, against public policy, void, and unenforceable."

As has been pointed out, there seems to be no direct prohibition in Missouri against a bank effectuating the housing of its banking establishment through the medium of a corporation for that specific purpose. Conversely, there is also no direct authority, either statutory or by court decision, that they may do so. Accordingly, let us look to the Missouri authorities on express and implied powers of corporations to see whether such authorities add anything pertinent to the question at hand - whether a bank may hold its land through a subsidiary corporation.

Note again, the portion of Section 5 of Article XI, Constitution of Missouri, 1945, quoted on page 1 of this opinion, indicates that corporations' powers are restricted to the purposes set forth in their charter. However, it is a familiar principle of constitutional law that express powers carry with them implied powers to do those things necessary to effectuate their purposes.

The Missouri Supreme Court elaborated on this doctrine of implied powers in State ex inf. Harvey v. Missouri Athletic Club et al., 261 Mo. 576, l.c. 599, 170 S.W. 904, as follows:

> "But the implied powers are of moment. They are defined to be those possessed by a corporation not indispensably necessary to carry into effect others expressly granted, and comprise all that are appropriate, convenient and suitable for that purpose, including, as an incidental right, a reasonable choice of the means to be employed in putting into practical effect this class of powers."

These doctrines were applied to banks in Mutual Bank and Trust Co. v. Shaffner, 1952, 248 S.W. 2d 585, at 589, as follows:

> "The plan is based upon principles consonant with long established banking methods and recognized insurance practices. It is not inherently wrong. It neither violates the law nor contravenes public policy. It

appears to be an appropriate, businesslike means of the exercise of the bank's powers."

CONCLUSION

It is the opinion of this office that Section 362.105, RSMo 1949, outlining the basic corporate powers of banks, impliedly authorizes a state chartered bank in Missouri to acquire by purchase the capital stock of a corporation organized to construct a bank building to be leased to the state chartered bank for its banking facilities.

Very truly yours,

John M. Dalton
Attorney General

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