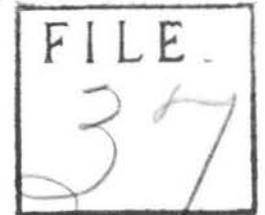


BANKS AND Interpretation of term "actual market value"
BANKING: in Subsection (c), Paragraph 4, Section 7952,
R. S. Mo. 1939, as amended by Laws of Missouri,
LOANS: 1941, page 679.

March 18, 1942

Honorable D. R. Harrison
Commissioner
Department of Finance
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your letter of recent date wherein you request our opinion based upon a question submitted to you by the president of a state bank in Kansas City, Missouri. For the reason that the letter of request and the accompanying documents are very long, we are not setting forth same in full, and, in writing this opinion, we are assuming that the facts are true. The question, as we understand it, is, What is the interpretation of the term "actual market value of the property held in store" as used in Section 7952, R. S. Mo. 1939, as amended by Laws of Missouri, 1941, page 679, which section has to do with the restrictions on loans, purchases of securities and total liabilities to banks of any one person.

The bank in question has loaned to a company in Kansas City a sum of money in excess of fifteen per centum, as provided by Paragraph 1, Section 7952, herein-after set out, and said loan has been criticized by the federal examiners. The bank contends that the loan comes within the provisions of Subsection (c), Paragraph 4, of Section 7952; that is, the loan is secured "upon paper based upon the collateral security of warehouse receipts covering agricultural products or the manufactured or processed derivatives of products in public elevators or public warehouses." The loan is made on canned vegetables, soups and other grocery items of standard make and packing.

The only criticism made of this loan, as set forth in the various documents accompanying your request, is that the commodities, in the opinion of the federal examiners, did not have "actual market value" in Kansas City, Missouri, for the reason that the collateral held is not traded in an open and competitive market at

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established value and that there is no public market sheet of any kind quoting the market of this class of goods daily. We understand that the loan of \$58,187.20, made to the company by the bank qualifies in every respect except for the above assigned reasons.

Section 7952, R. S. Mo. 1939, as amended by Laws of Missouri, 1941, at page 679, provides in part as follows:

"A bank subject to the provisions of this article:

"1. Shall not directly or indirectly lend to any individual, partnership, corporation, or body politic, either by means of letters of credit, by acceptance of drafts or by discount or purchase of notes, bills of exchange or other obligations of such individual, partnership, corporation or body politic an amount or amounts in the aggregate which will exceed fifteen (15) per centum of the capital stock actually paid in and surplus fund of such bank if located in a city having a population of one hundred thousand or over * * * :

Subsection (a) provides that the restrictions in this subdivision shall not apply to United States bonds, state bonds and other securities which are not relevant to this opinion.

Your question pertains more particularly to Paragraph 4, Subsection (c) of Section 7952, supra, which provides in part as follows:

"(c) The total liabilities to such bank of any individual, partnership or corporation may equal but not exceed thirty-five (35) per centum of the capital stock actually paid in and surplus fund of such bank:

Provided that all of such total liabilities in excess of the legal loan limit of such bank as defined in subsection (b) of this subdivision is upon paper based upon the collateral security of warehouse receipts covering agricultural products or the manufactured or processed derivatives of agricultural products in public elevators and public warehouses subject to state supervision and regulation in this state or in any other state of the United States, under the following conditions: First, that the actual market value of the property held in store and covered by such receipt shall at all times exceed by at least fifteen (15) per centum the amount loaned upon the same; and second, that the property covered by such receipts shall be insured to the full market value thereof against loss by fire and lightning, the insurance policies to be issued by corporations or individuals licensed to do business by the state in which the property is located, and when such insurance has been used to the limit that it can be secured, then in corporations or with individuals licensed to do an insurance business by the state or country of their incorporation or residence; and all policies covering property on which the loan is made shall have indorsed thereon, loss, if any, payable to the holder of such warehouse receipts; and provided further, that in arriving at the amount that may be loaned by any bank to any individual, partnership or corporation on such elevator or warehouses (warehouse) receipts there shall be deducted from said 35 per centum of its capital and surplus fund the total of all other liabilities of such individual, partnership or corporation to such bank."

We are inclined to take the view that the commodities do have an "actual market value" in Kansas City, and we

cannot agree with the construction given this statute by the federal examiners. We have some knowledge of the markets in Kansas City and the extensive dealings in the above commodities in that market. If these commodities do not have a market value in Kansas City, we do not know - where else one could go in the State of Missouri to find such a market, and, in effect, it would be holding that these commodities do not come within the terms of Sub-section (c) of Paragraph 4 because they have no actual market value for the reason that there is no competitive market which establishes values daily and no published quotations of those articles in the state. It would seem that in a great trading center like Kansas City these articles would have an actual market value, and we so find. If the Legislature had intended to give the term "actual market value" such a restricted meaning, it would have done so. We must interpret same as it is written.

What does the term "actual market value" mean, as used in this statute? We have assembled a few of the definitions of the words "market value" as used in the various texts. In Cyclopedic Law Dictionary, 3rd Edition, the following definition is given:

"The price established by public sales, or sales in the way of ordinary business, 99 Mass. 345; what the property will sell for as between one who wants to purchase and one who wants to sell. 151 Wis. 224."

In Words and Phrases, Permanent Edition, Volume 26, we find the following definition:

"'Market value' is frequently stated to be such a price as dealers in goods are willing to receive and the purchasers are made to pay when the goods are bought and sold in the ordinary course of trade. Albrecht & Son v. Landy, D. C. Minn., 27 F. Supp. 65, 72."

In Bouvier's Law Dictionary, Baldwin's Edition 1934, this definition is given:

"A price established by public sales, or sales in the way of ordinary business, as of merchandise. 99 Mass. 348; 69 N. Y. 448."

In Black's Law Dictionary, Second Edition, "market value" is defined as follows:

"The market value of an article or piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular article or piece of property."

The lawmakers, when they used the term "actual market value" in the above statute, intended that same be given its usual and customary meaning.

CONCLUSION

From the foregoing, it is our opinion that the commodities mentioned in your request do have an actual market value in Kansas City, Missouri, which is available and readily ascertainable, and that a loan may be made upon them by a state bank not to exceed thirty-five per cent of the capital stock actually paid in and surplus fund of

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of such bank, as provided in Paragraph 4, Subsection (c), Section 7952, supra, notwithstanding the fact that there may not be published quotations daily on them, and even though they not be traded in an open and competitive market.

Respectfully submitted,

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APPROVED:

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CRH:VC