BANKS: Who may rent safe deposit boxes.

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

Dear Commissioner Harrison:

Your letter of recent date to General Taylor requesting an opinion respecting who may engage in the business of renting safety deposit boxes, has been referred to the writer for reply and for the opinion requested.

Your letter states:

> "I shall appreciate an opinion as to whether any person, firm or company other than a bank or trust company can engage in the business of renting safety deposit boxes and if so the requirements with which they must comply."

Under the common law, any person could or may carry on any business that is lawful and innocent, subject only to such regulation as statutes, under the exercise of the police power of a State for the general welfare, may impose. On this rule of law, 12 C.J. page 921, has this to say:

> "The right to labor and the right to enjoy the rewards thereof are natural rights which may not be unreasonably interfered with by legislation. It is therefore beyond the police power to prohibit persons from engaging in the common business occupations or employments that are innocent and lawful in themselves, and that do not require the exercise of any special skill; and as to such occupations, the scope of

> the police power is confined to the enactment of regulations to promote the public health, safety, and welfare. * * *"

54 C.J., page 1116, defines a "safe deposit company" as follows:

> "A company which maintains vaults for the deposit and safekeeping of valuables in which compartments or boxes are rented to customers who have exclusive access thereto, subject to the oversight and under the rules and regulations of the company; one whose purposes are to keep and maintain safe deposit vaults and safes and strong boxes for the safe-keeping of valuable articles and property of all kinds."

Article 5, Chapter 39, R.S. Mo. 1939, deals with the subject of "Savings Banks and Safe Deposit Institutions". The article in its various sections treats in detail of the organization and operation of corporations for financial profit by receiving and using and lending deposits of money, selling securities, bonds, stocks, and other personal property which is especially mentioned in Section 8102, but we believe none of its provisions apply to the simple business of renting a safe deposit box by a bank or any other person for the mere purpose of furnishing a safe place for keeping such property. However, these provisions of Article 5, supra, have never been passed upon nor construed by the Courts of Missouri respecting safe deposit business.

Section 7997, R.S. Mo. 1939, does provide that banks doing a safe deposit business may be entitled to special remedies in enforcing payment from renters or lessees of such boxes. These provisions may be observed by reading said section, which is quite too long for copying or quotation here, but it will be seen in the last part of sub-section 1 of said Section 7997, that it is stated that banking corporations shall have a lien on such deposits to the same extent and enforcing the same method for payment of the rent for boxes as is now provided by law with reference to "warehousemen".

Section 8071, R.S. Mo. 1939, gives the same special remedies to trust companies doing a safe deposit business to enforce liability against renters or lessees of boxes.

The last part of sub-section 1 of Section 8071 also ties the methods of such enforcement in with "warehousemen"

for trust companies as does Section 7997, respecting banks. It will, therefore, it is believed, be a reasonable conclusion at which to arrive therefrom, that the Legislature did not intend to give, and did not give, banks or trust companies any special or exclusive right as a part of banking business to conduct a safe deposit business. Indeed, it may well be said that they did not undertake to give such institutions any right at all with respect thereto, because they possess that right under the common law, and the Legislature only provided, in cases where the right should be exercised, that they shall have the same rights and methods given to warehousemen to collect for their rentals.

We find nothing in our statutes prohibiting any person or corporation from conducting a safe deposit business in this State, nor is there any statute in this State regulating such business, except under the warehousemen's Act, Sections 15476, etc. The State of New Jersey in 1890 passed an Act very similar to our Article 5, Chapter 39, relating to Savings Banks and Safe Deposit Institutions, supra.

That Act was construed by the Court of New Jersey in the case of State vs. Kelsey, 53 N.J.L. 590. That case was a mandamus proceeding to compel the Secretary of State of the State of New Jersey to file a certificate of incorporation of a corporation organized under the Act of 1890 of that State, which, as we view it, from the statement made in the syllabus and in the text of the decision, is very similar to our savings banks and safe deposit institutions Act, for the sole purpose of renting safe deposit boxes and vaults. The Secretary of State of New Jersey refused to file the certificate of incorporation as requested on the ground that the company came under the terms of the Act of 1890, and that it had not provided the one hundred thousand dollars capital, nor had they procured the approval of the State Board of Bank Commissioners, both of which were required by the Act of 1890.

The case of State vs. Kelsey, 53 N.J.L. 590, held that the Act of 1890 of the State of New Jersey, did not apply to corporations organized solely for the purpose of renting safety deposit boxes but that it did apply to financial institutions such as banking companies, savings institutions and others designed to derive profit from the loan or use of money or securities. In the course of the opinion, the Court, l.c. 591, 592, said:

> "The question to be determined is whether, by reason of the name so adopted by the

> corporation certificate, and because of the objects and purposes which it aims to work out in its future, or either of these, bring it within the spirit and meaning of the enactment in question. If it be embraced within the restrictive law of 1890, the relators must fail in their suit, for they have not in their organization the required capital; nor has the incorporation received the approval of the board of bank commissioners. But if, on the other hand, this company is not, in the legislative intent, included within its provisions, then, as the act of the secretary of state becomes, in receiving the certificate, purely a ministerial one, mandamus should issue as the appropriate and only legal remedy of relators."
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> "* * * It intended to treat exclusively of financial corporations and associations, such as banking companies, savings institutions and others designed to derive profit from the loan or use of money or securities. Such clearly appears to be its general purpose, and each of its details plainly aims at the regulation of such institutions for the public protection; and not one of them is appropriate to corporations like that formed by the relators, or possessed of any meaning when applied to such."

The Court directed the Secretary of State by mandamus to file a certificate of incorporation as requested.

Both the New Jersey Act and our savings banks and safe deposit institutions Act are directed at financial corporations and such banks and institutions as accept and use by lending, selling, and re-investing, for profit, money and securities and other property and do not include persons, associations or corporations who may desire to keep and maintain and rent safe deposit vaults or boxes for the safekeeping of valuable personal property. The New Jersey case cited is, we think, sound authority for the opinion that the proposed renting of a vault and safety

deposit box by the individual does not come under our savings banks and safe deposit institutions chapter, supra. Neither is such an undertaking prohibited or regulated in any particular by any of our banking statutes but is only amenable to the warehousemen's Act and a license to do such business would only be required in cities of over 25,000 inhabitants, as is provided in Section 15479, R.S. Mo. 1939.

CONCLUSION.

It is, therefore, the opinion of this department that "any person, firm or company other than a bank or trust company can engage in the business of renting safety deposit boxes" and that there are no requirements of law with which they must comply, except those contained in the warehousemen's Act of Missouri, in cities of over 25,000 inhabitants.

Respectfully submitted,

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APPROVED:

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