BANKS & BANKING: Interpretation of Senate Bill No. 312, Laws of Mo., 1939, p. 758. Amounts of state bonds and municipal bonds that may be held without limitation.

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January 22, 1940

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Honorable R. W. Holt
Commissioner of Finance
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your letter, which is as follows:

> "I am enclosing a copy of Senate Bill No. 312, enacted at the last session of the Legislature, and shall appreciate an opinion as to whether bonds or other evidences of debt of any state of the United States other than the State of Missouri may be purchased by banks without limitation, or whether the restrictions outlined in sub-paragraph 3 of paragraph (a) of sub-section 1 of Section 5357 apply to bonds or other evidences of debt of any state of the United States other than the State of Missouri as well as to the bonds or other evidences of debt of any county, city or school district of such foreign state."

You also ask our opinion on what effect the act appearing in Laws 1939, p. 758, has upon subsection (g) of an act appearing in Laws 1935, p. 378.

I

Senate Bill 312 as enacted by the 60th General Assembly appears in Laws 1939, p. 758, as Section 5357. By part 1 of

this act banks, that are subject to its provisions, may not lend to a 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" amounts which will exceed fifteen per cent of the capital stock actually paid in and surplus fund of said bank if located in a city having a population of one hundred thousand or more; or twenty per cent if located in a city having a population of less than one hundred thousand and over seven thousand; or twenty-five per cent if said bank is located elsewhere in the state.

The act, after placing the above limitations upon banks, then provides some exceptions which are as follows:

> "(a) The restrictions in this subdivision shall not apply to -
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> 1. Bonds or other evidences of debt of the government of the United States or its territorial possessions or of the State of Missouri or of any city, county, town, village or political subdivision of this state.
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> 3. Bonds or other evidences of debt of any state of the United States other than the State of Missouri or of any county, city or school district of such foreign state, which county, city or school district shall have a population of fifty thousand or more inhabitants, and which shall not have defaulted for more than one hundred twenty days in the payment of any of its general obligation bonds or other evidences of debt, either principal or interest, for a period of ten years prior to the time of purchase of such

> investment and provided that such bonds or other evidences of debt shall be a direct general obligation of such county, city or school district."

It is clear that the terms of Section 5357, part 1, are completely negatived by part (a) 1, of the same section insofar as it applies to bonds and other evidences of debt of the government of the United States or its territorial possessions or of the State of Missouri or of any city, county, town, village or political subdivision of this state. The rule on this is stated in Castilo v. State Highway Comm. 279 S. W. (Mo. Sup) l.c. 678 to be: "when the restriction laid in the main part of the act is lifted by the proviso, (or exception) the whole act must be read as though the restriction never existed as to the matter covered by the proviso."

It is equally clear that the terms of Section 5357, part 1, are negatived by part (a) 3 of the same section insofar as it applies to bonds and evidences of debt of other states of the Union, excepting Missouri. And, also as to bonds and evidences that are direct general obligations of a county, city or school district of other states of the Union, other than Missouri, if said foreign county, city or school district has a population of fifty thousand or more and has not in the ten years prior to the time the bank purchases its bonds and evidences of debt been in default for more than one hundred twenty days in the payment of the principal or interest on any of its general obligations.

Therefore, it is the opinion of this department that banks in Missouri are not limited by the terms of Section 5357, part 1, Laws 1939, p. 760, in the amount of bonds or other evidences of debt they may acquire of, or loans they may make to the United States Government, the State of Missouri, or a body politic of this State of the class named in Section 5357 (a) 1. Neither are said banks limited as respects other states of the Union or a county, city

or school district of another state of this Union if said county, city or school district can meet the conditions prescribed in Section 5357 (a) 3.

This conclusion must be subject to a condition later to be considered.

II

Section 5357 R. S. Mo. 1929 was amended in Laws 1935, page 378, by adding subsection (g). The purpose of that amendment was to lift the restriction placed on the amount of loans a bank might make to an industrial or commercial business if at the time of making such loan a Federal Reserve Bank or the Recontruction Finance Corporation had agreed to purchase or discount said loan, then, in that event in ascertaining the maximum amount the bank might loan under the terms of Section 5357, part 1, the part these federal agencies had agreed to discount or purchase was not to be considered.

Section 5357 R. S. Mo. 1929 was again amended in Laws 1939, p. 758, by striking out (a) and (b) of subdivision 1 and substituting (a) 1, 2, 3, 4 and (b). (See Laws 1939, p. 760, et seq). Then the legislature, in complying with the Constitution by setting forth the whole section, as it was to be after the amendment, copied the balance of the section as it appeared in the Revised Statutes of 1929 completely overlooking the addition of subsection (g) made in Laws 1935, page 378, in that subsection (g) was not copied into the Act as it appears in Laws 1939, p. 758. This method of legislation is not a literal compliance with Section 34, Article 4 of the Missouri Constitution. Whether this omission is fatal remains to be seen.

In either event, Section 5357 -1(g) Laws 1935, p. 378, is still in effect. The act of 1939 is not a repaling act but only purports to amend Section 5357 R. S. Mo. 1929. Neither is there anything in the 1939 act that conflicts

with subsection (g) of the 1935 act so that it would be repealed by implication.

Respecting the omission above mentioned Section 34 Article 4 of the Missouri Constitution is as follows:

> "No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended." (Underscoring ours)

We have examined all cases in this jurisdiction that we can find which apply and interpret this constitutional provision and its forbearer Section 25, Article 4 of the Missouri Constitution of 1865. These cases may be classed in four categories. The first deals with legislation where one section of an act, consisting of several sections was amended - the one section set forth in full, but not the whole act. This has been held to be proper. State vs. Thruston 92 Mo. 325, 326; State vs. Chambers 70 Mo. 625, 627. The second class of legislation is where a section is amended without the usual prefatory statement as to that portion to be stricken or inserted, but merely designating the section to be amended and setting forth in full the new section as amended. This has been held to be proper. Morrison vs. St. L. Iron Mt. & So. Ry. Co. 96 Mo. 602; State vs. Bennett 102 Mo. 356; State ex inf v. Herring 208 Mo. 708, 724. The third class is where new sections are added to an act containing several sections without setting out the new and old sections in full. This has been held proper. State vs. Hendrix 98 Mo. 374. The fourth class is where a prefatory clause is used stating the words to be stricken or inserted and then the section as amended set out in full. This is also proper.

Cox vs. Hannibal & St. Joseph R. R. Co. 174 Mo. 588, 601. In French vs. Woodword 58 Mo. 66, it is held under the Constitution of 1865, that a statute could not be amended by referring to the previous act and saying it "is hereby amended so as to authorize the city marshall to act as deputy constable." This because the act as amended was not "set forth and published at length, as if it were an original act or provision" as was required by the Constitution of 1865. In City of Boonville v. Trigg 46 Mo. 288, the court held valid an act amending the charter of Boonville. Section 1, Laws 1838-39, p. 294, of the charter contained a description of the boundaries and other provisions relating to the officers. In Laws of 1868, p. 191, Section 1 was amended only as pertains to the boundaries and was not then set out in full as amended. The court held this valid on the theory that the 1865 Constitution permitted parts of the section to be amended without setting forth in full all the other parts, but went on to say that a provision, as our Constitution reads today, would prevent such manner of legislation.

The above summary clearly shows that the precise point before us has not yet been passed upon by the courts, yet all cases heretofore cited with the one exception are emphatic in saying the amended section must be set forth in full. Other cases using the same statements are: State ex rel v. Miller 100 Mo. 439, 446; Burge vs. Wabash R. R. Co. 244 Mo. 76, 88; State vs. Berry 253 S. W. 712, 714 (Mo. Sup.); State vs. Fenley 275 S. W. 36, 39 (Mo. Sup.); State ex rel vs. Wellston Sewer District of St. Louis Co. 58 S. W. (2nd) 988, 995 (Mo. Sup.).

All the cases heretofore cited are clear in that legislation to meet the requirements of Section 34, Article 4, Missouri Constitution must set out in full the law incorporating said amendment. Examples of this are: State v. Fenley 275 S. W. l.c. 39 and State v. Berry 253 S. W. l.c. 714, where it is said, "The section as amended must be set out in full." State ex rel v. Miller 100 Mo. l.c. 446 where the court states, "When an act undertakes to amend a former statute it is not sufficient to say certain words are stricken out, or certain words inserted, but the section as amended must be set out in full, and this is all that is required." Morrison v. St. Louis

Iron Mt. & So. Ry. Co. 96 Mo. l.c. 606 where it is said, "When a section of an existing statute is amended, the sections, as amended, must be set out in full; nothing more is required." State v. Thruston 92 Mo. l.c. 327, states respecting this that the section, "when amended shall be fully set forth in the amendatory act as amended." State v. Chambers 70 Mo. l.c. 628, where it is said the Constitution, "requires the entire act, when the amendment relates to the entire act, to be set out in full, or when the amendment relates only to certain sections of an act to be amended, that only the sections as amended should be fully set out." (Underscoring in the above quotations ours).

Section 5357 Laws 1939, page 758, is a single section and if we accept the phrase "set forth in full as amended" in the ordinary usual meaning applied to the words, as must be done, then the amendment of said section is not strictly in compliance with the Constitution for the reason the section is not set forth in full. Subsection (g) Laws 1935, p. 378, has been omitted.

This omission causes the status of Senate Bill 312 Laws 1939, p. 758, to be doubtful and our conclusion heretofore reached respecting the rights of banks under Senate Bill 312 must be qualified to the extent that we assume it to be valid and only interpret its meaning.

Therefore, it is our opinion that subsection (g) of Section 5357 Laws 1935, p. 378, is in no way affected by the enactment of Senate Bill 312 Laws 1939, p. 758, and that said subsection still exists as law.

Respectfully submitted,

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APPROVED:

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