BANKS AND BANKING:
SMALL LOAN BUSINESS: Banks are not authorized under their charter to do a banking business to exercise the powers of the Small Loan Act, nor act as a corporation authorized to subscribe for majority stock of Small Loan Corporations.

April 3, 1941

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

Dear Sir:

This is in reply to yours of recent date wherein you submit a request for an opinion from this department on the following questions:

"a. Can a state bank or a national bank under its general powers as enumerated in Section 7749 or the Revised Statutes of Missouri, 1939, exercise the powers of the small loan act and the loan and investment act without incorporating under said acts?

"b. Or, must it, under your practice and decision, incorporate a separate entity and thus run it as an affiliate of the bank?

"c. Can a bank, as a corporation, subscribe for the majority stock of such corporations under your rulings or must it directly do, through its individual officers and stockholders, that task?"

Section 7 of Article XII of the Constitution of Missouri, which relates to corporations, provides as follows:

> "No corporation shall engage in business other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized, nor shall it hold any real estate for any period longer than six years, except such as may be necessary and proper for carrying on its legitimate business."

The question here submitted is: does the authority granted by the Small Loan Act so resemble the banking business that it could be said that the bank, in addition to its express power to do a banking business under its charter, would have the implied power to carry on the business of a small loan and investment company. Our Supreme Court in the case of Hunter v. Garanflo, 246 Mo. 131, l. c. 132, in discussing the object and effect of the foregoing provision of the Constitution said:

> "The object and effect of the Constitution and laws of this State with reference to corporations seem to be to permit and encourage the investment of the money of the people in business enterprises under corporate management, without the incurring of any personal liability beyond the full payment for the stock subscribed or otherwise owned by the members of the association. That this plan has been of great benefit to the State, permitting as it does the free employment of the private means of all, including the helpless classes, in active business operations, without the danger of other loss than of the capital invested, will be disputed by none. That the State should carefully safe-

guard such investments made with its encouragement, so that the fund which it permits to be substituted for personal liability will be carefully preserved and scrupulously devoted to that purpose, is equally evident. To this end it is provided by the Constitution that, 'No corporation shall issue stock or bonds, except for money paid, labor done or property actually received' (Art. 12, Sec. 8), and that 'No corporation shall engage in business other than that expressly authorized in its charter or the law under which it may have been or hereafter may be organized' (Id., Sec. 7). It is futile to say that these provisions are for the benefit of stockholders exclusively.

"They are both directed against the stockholders and are primarily intended for the benefit of the public, by securing, as far as possible, the integrity of the fund for the protection of those who may deal with it, as well as those who may become the purchasers of its stock upon the faith of the representations made in the act of its incorporation. The withdrawal of this fund, or any part of it, by the stockholders, otherwise than under the sanction of the law in conformity with which it is created, or its application to other uses than those authorized by the laws under which the corporation exists, is a clear violation of the policy of the State as expressed in its Constitution."

We also think the rule which should be applied in a case like the one here under consideration is stated in Downey v. City of Yonkers, 23 Federal Supplement 1018, wherein the Federal District Court, S. D. New York, said (l. c. 1021):

> "Banks are the creation of statute. Their authority is necessarily limited strictly by statute. Pledge of deposits may lead to serious injury to unsecured depositors. Authority based on implied power must be clearly established."

The term "bank" is defined in Section 7998, R. S. Mo. 1939, as follows:

> "The term 'bank' shall include any person, firm, association or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether such deposit is made subject to check, or is evidenced by a certificate of deposit, a pass book, a note, a receipt, or other writing."

Our Supreme Court in State ex rel. Compton v. Buder, 308 Mo. 253, l. c. 260, in discussing the subjects of banking and doing a banking business, said:

> "We have found only two sections of our statutes which attempt to define what is meant by 'banking business' and they are not found in the chapter on taxation. Section 11781 defines private bankers as 'those who carry on the business of banking by receiving money on deposit, with or without interest, by buying or selling bills of exchange, promissory notes, gold or

> silver coin, bullion, uncurrent money, bonds or stocks, or other securities, and of loaning money, without being incorporated.'
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> "It will be noted that such persons must be engaged in three lines of business activity, to-wit, accepting deposits, buying and selling various securities and loaning money. The land bank is actually engaged in a restricted way in the loaning of money, but admittedly not in the business of receiving deposits. It is not doing a banking business under the definition contained in said Section 11781.
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> "The other statutory definition is found in Laws of 1923, page 223, which enacted a new section known as Section 11780a, Revised Statutes 1919. We note the contention of the assessor that the 1923 act did not take effect until after the date of the assessment under consideration here, but will quote said section for what it is worth. It provides that 'the term "bank" shall include any person, firm, association or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether such deposit is made subject to check, or is evidenced by a certificate of deposit, a pass book, a note, a receipt or other writing.'
> * * * * *"

In the Buder case, supra, the court held, l. c. 261, that a Federal Land Bank which neither received deposits nor cashed checks was not doing a banking business. The Federal Land Bank only made loans on improved farm lands.

The case of State ex rel. Hadley v. Bank, 157 Mo. App. 557, was one in which a trust company was attempting to en-

gage in banking business. At l. c. 564 the court, in speaking of the powers of the trust company to engage in banking business, said:

> "The ninth clause of section 1124, Revised Statutes 1909, authorizes trust companies 'to buy and sell all kinds of government, state, municipal and other bonds, and all kinds of negotiable and non-negotiable paper, stocks, and other investment securities.' The grant of authority to buy and sell stocks and other investment securities as commercial commodities carries with it neither the express nor implied authority to purchase the stock of other corporations for the purpose of controlling their management, (DeLavergne Co. v. German Savings Inst., 175 U. S. 40.) Nor to use the power conferred by law for the purpose of indirectly engaging in business activities forbidden to the corporation by the express provisions of the statute. The act of the Bankers Trust Company in controlling the management of the Kansas bank through the ownership of a large majority of the stock of the bank was not buying and selling stocks within the meaning of the statute, but was a clear and flagrant evasion and violation of the law. * * * * * *"

The rule on the power to do certain things under the authority of a banking corporation is stated in Volume 7 C. J., page 585, at Section 213, as follows:

> "In the case of an incorporated bank, the charter is a contract and furnishes the measure of the powers of the corporation, such powers being limited to those

> which are expressly granted by the charter and such incidental powers as are essential to the exercise of those expressly granted. A banking corporation or association formed under a general banking act possesses authority to carry on the business of banking only in the manner and with the powers specified in such act.
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> "A grant of some banking powers to a corporation does not authorize it to exercise other banking powers not expressly granted or necessary to the exercise of those which are granted."

And, in the same Volume (7 C. J.) at page 590, Section 227, the authority of a banking corporation to acquire stocks of other corporations is stated as follows:

> "As a general rule, banks are denied the power to purchase, acquire, or deal in the stock of other corporations, except where such stock is acquired for a past debt, or where the power is given by special enactment. * * * * * * * * * * * * * * * * *"

By an examination of the Loan and Investment Company Act, which is found in Article 8 of Chapter 33, Sections 5418 to 5425, inclusive, it will be seen that such companies are organized and operate entirely on a different plan to that of the banking business. The Loan and Investment Companies are authorized to loan money and to sell evidences or certificates of indebtedness and to receive from purchasers security therefor. Further examining this act it will be seen that such companies are not authorized to accept deposits, in fact, Section 5424 of the act prohibits such companies from accepting deposits or engaging in banking business. Clearly, by this section the lawmakers considered that the loan and investment business was entirely a different business to that of banking. These Loan and Investment

Companies are not under the supervision and jurisdiction of the Finance Department. If banks were permitted to carry on the business authorized by the Loan and Investment Acts then the depositors' money could be invested under the Loan and Investment Act without any protection from the Finance Department. The money used by the Loan and Investment Companies to carry on that business belongs to the stockholders of the company, while if the banks were authorized to carry on such a business they could use the money of the depositors. We do not think that the banks either by expressed power or by implication would be authorized to assume the duties of the Small Loan Act and the Loan and Investment Act.

CONCLUSION.

From the foregoing, it is the opinion of this Department:

(a) That a state bank or a national bank under its general powers or under the powers granted by the Constitution, is not authorized to exercise the powers of the Small Loan Act and the Loan and Investment Act without incorporating under said acts.

(b) That such banks should, if permitted, incorporate as a separate entity to operate such loan and investment companies.

(c) That such a bank as a corporation shall not subscribe for the majority stock of corporations to operate under the Small Loan Act and the Loan and Investment Act.

Respectfully submitted,

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APPROVED:

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