BANKS-TRUST COS.-Loans under Sections 7952 or 8032, Laws of Mo., 1943

Banks or trust companies may not accept assigned life insurance policies as security for loans under Section 7952 or Section 8032, Laws of Mo. 1943, as security constituting "collateral security having an ascertained market value", and if so used by a bank or trust company to increase the loan ratio of the capitalization of any such bank or trust company above the percentage set out in said Sections, such loan or loans would be excessive.

May 24, 1946

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Honorable M. E. Morris
Commissioner of Finance
Jefferson City, Missouri

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Dear Commissioner Morris:

This will acknowledge the receipt of your request for an opinion respecting the use of assigned life insurance policies as "collateral security having an ascertained market value" in obtaining loans from banks under Section 7952 and Section 8032, R.S. Mo. 1939, and amendments thereto.

Your letter is as follows:

> "A controversy has arisen in connection with the construction placed on Section 8032, paragraph 4, subparagraph (b), and Section 7952, paragraph 4, subparagraph (b), Laws Missouri, 1941, for banks. The question is whether or not a loan secured by properly assigned life insurance policies with sufficient cash value to collateralize the loan would be considered as constituting 'collateral security having an ascertained market value.'
>
> "Quoting from communication received in this connection and for your information,
>
> > "'Your letter of the 15th draws the conclusion that the provisions include only loans to foreign nations, railroad corporations or corporations subject to the jurisdiction of a public service commission of this state and make no provision for cash value of life insurance. The foreign nations,

etc, is only the first phase of the rule and we agree in that it does not apply to the case at issue.

"'The second phase which refers to loans to individuals, etc. governs in our particular case and provides for loans up to 25% of our capital and fixed surplus against assignments of cash value life insurance under the classification of "collateral security having an ascertained market value of at least 15% more than the amount of the liabilities so secured."

"'The insurance policies which we hold are all issued by top rated companies and of course provide a specific loan and redemption value so there cannot be any question at any time as to the collateral security and the market value. In effect they are a guaranteed first lien obligation of the insurance companies.

"'At the time of our last examination we had a capital and fixed surplus of $375,000.00 which made our loan limit to any one name, under the terms of paragraph 4(b) $93,750.00 of which 60% could be unsecured and 40% secured. Since examination date we have increased our capital and fixed surplus to $400,000.00.

"'The loan in question is only $63,146.21 and the collateral value $74,000.00 plus, or almost 120% collateralized.

"'If we are wrong in our interpretation as to the latitude of the word "Collateral Security having an ascertained market value" then we might just as well disregard everything except the

15% rule as covered by paragraph 1 of Sec. 7952 because how are we going to determine a sounder valuation on any commodity, whether it be real estate, automobiles etc., food products, stocks, bonds or what have you.'

"Our Examiner has taken the position that the amount of the loan is excessive under the provisions of this Section and that this type of collateral does not come under the exceptions set out.

"We would appreciate your opinion very much."

Sections 7952 and 8032, as mentioned in your letter, and as contained in the Session Acts of Missouri, 1941, appeared under the same section numbers in the Revised Statutes of 1939.

Both sections were again amended in the Laws of Missouri of the legislative session in 1943.

Section 7952 relating to banks appeared in the Laws of Missouri, 1941, at page 680. This section appears in the Laws of Missouri, 1943, at page 994.

Said Section 8032 relates to trust companies. This section of the revision of 1939, appears in Laws of Missouri, 1941, at page 685. This section as later amended, Laws of Missouri, 1943, appears at page 988.

There is no appreciable difference, if any at all, in the language of the two sections appearing at the pages above designated in Laws of Missouri, 1943, from the language used in both of said sections in the revision of 1939, and the amendments of 1941.

Both of these sections, Section 7952 relating to banks, and Section 8032, relating to trust companies, constitute the present laws of this State in saying what banks and trust companies shall do and shall not do. The particular sections and subsections referred to in your

letter as to banks are subsection (4), paragraph (b) of Section 7952, l.c. 995, 996, Laws of Missouri, 1943, and as pertaining to trust companies, subsection (4), paragraph (b) of Section 8032, Laws of Missouri, 1943, l.c. 989, and undertake to, and do set out and safeguard the percentage of the capitalization of any such bank or trust company that may be loaned to any one individual, partnership, corporation or body politic, by means of the use of the different kinds of collateral therein mentioned to obtain such loan. Subsection 1 of Section 7952, Laws of Missouri, 1943, l.c. 995, and subsection 1 of Section 8032, Laws of Missouri, 1943, l.c. 988, dealing with banks and trust companies, respectively, set forth the restrictions to which the banks and trust companies are held in the percentage of their capitalization they may make on loans, and describe the kind of security upon which such restrictions are established as the basis of such loans.

Then follow the descriptions of the kinds of evidences of debt which are exceptions to the kinds of securities upon which such restrictions are fixed. Both sections (b) of said Section 7952, relating to banks, and of said Section 8032, relating to trust companies, appearing respectively, on page 996, Laws of Missouri, 1943, under "Banks", and Section 8032, page 989, Laws of Missouri, 1943, relating to "Trust Companies" are identical in every particular, except at the appropriate place in each of said sections they use the words "trust company" and "bank".

It will be noted that both of these paragraphs (b) of the subsections of Sections 7952 and 8032, Laws of Missouri, 1943, respectively, close with these significant words: "are secured by collateral security having an ascertained market value of at least fifteen (15) per centum more than the amount of the liabilities so secured." The collateral sought to be used and accepted under the loan mentioned in the correspondence that you quote from is assigned life insurance policies, having, it is said, sufficient cash value to "collateralize the loan", and, according to the understanding of the person who was the writer of your information would constitute "collateral security having an ascertained market value".

We do not find mentioned in any part of either Section 7952, relating to banks, or Section 8032, relating to trust companies, that life insurance policies may be

considered in the character of securities which are either included or exempted from the classes of securities named in said sections which may be considered as collateral security for loans.

It has long been the law of this State as declared by our statutes and by our courts that, life insurance policies may be assigned and used as collateral for a loan. This is the declared law of every State in the Union, we believe. Our statute 5862, Article 3, Chapter 37, R.S. Mo. 1939, recognizes the validity of such an assignment of an insurance policy where it is stated, in part: "Any assignment of a policy or certificate to a person having no insurable interest in the insured life shall render such assignments void and of no effect."

37 Corpus Juris, page 387, Section 52, in part, under the title of "Life Insurance" states the rule thus:

> "The authorities are agreed that an assignment of a life insurance policy to a person possessing an insurable interest in the life of insured is valid. * * * ", citing Kelly vs. Prudential Ins. Co., 148 Mo. A. 249.

The opinion in Kelly vs. Prudential Ins. Co., supra, in sustaining the above rule, l.c. 258, states:

> "The proposition contended for by counsel for respondent that a party cannot assign an insurance policy to one who is not a relative is untenable. It has been decided that he may assign to any one standing in the position of creditor or dependent; that is, to one who has an insurable interest in his life. * * * ".

The proposition of the validity of the assignment of a life insurance policy to a person, a bank, or any other assignee, as a creditor is not the particular question here. The evident conclusion of the bank in this case is that, it may make a loan in excess of the percentage ratio of the capitalization of the bank with assigned life insurance policies under both of said paragraphs (b) of subsections 4 of both, Sections 7952, Laws

of Missouri, 1943, page 996, relating to banks, and 8032, Laws of Missouri, 1943, page 989, relating to trust companies, and that life insurance policies may be used as security for loans as "collateral security having an ascertained market value of at least fifteen (15) per centum more than the amount of the liabilities so secured."

This, we think, may not be done.

One of the exceptions made in both of said Sections 7952 and 8032, to the restrictions in subsection 1 of each of said sections on the character of securities which may be made the basis of the percentage of the capitalization of a bank or trust company loan is contained in the last clause of said paragraph (b) of subsection 4 is, to again repeat, "collateral security having an ascertained market value of at least fifteen (15) per centum more than the amount of the liabilities so secured." This exemption, we think, could not possibly include life insurance policies so far as "market values" are defined and construed. They not only do not have an "ascertained market value", but they possess no "market value" at all.

It is well known, we think, that life insurance policies have a paid up value, a surrender value, an extended insurance value, an assignment value, and a convertible insurance value to the insured, his beneficiary or his assignee dealing directly with him, and to repeat again, an assignment value as collateral for a loan, but to say that life insurance policies have a "market value" is not supported in any case by either law or usage that we are able to discover. Public policy forbids such practice.

There are certain elements defined by law writers which must be considered in making up the "market value" of property. This is well stated in 38 Corpus Juris, pages 1262 and 1263, Section 18 (b), as follows:

> "Just what elements go to make up market value depend largely upon the facts and circumstances surrounding the particular case. There is no inflexible rule. 'Market value' implies the existence of a market, that is, a demand or want. It relates to buying and selling. Market values are created and controlled by the condition

> of the market with reference to supply and demand. * * * ".

Our St. Louis Court of Appeals in the case of Wagoner Undertaking Company vs. Jones, Executor, 134 Mo. App. Rep. 101, l.c. 107, defined the market value of the subject of that law suit as follows:

> "* * * and by their market value is meant the prices they commonly brought at the time. * * * ".

One of the best and most clearly stated definitions we are able to cite of "market value" is an excerpt on page 1265, 38 Corpus Juris under note 74 (b) from Sloan vs. Baird, 162 N.Y. 327, 330, 56 NE 752, which is as follows:

> "(b) 'The market value of property is established when other property of the same kind has been the subject of purchase or sale to so great an extent and in so many instances that the value becomes fixed.' Sloan v. Baird, 162 N.Y. 327, 330, 56 NE 752 * * * ".

Having in mind the text above quoted from Corpus Juris that one of the primary elements for the establishment of a "market value" of any commodity is that, there must be a "market" for such commodity, it would be, we think, quite contrary to the intention of the Legislature in enacting Sections 7952 and 8032, supra, that assigned life insurance policies should be considered as "collateral security having an ascertained market value".

If life insurance were to be considered as having a market value it would be to establish it as the subject of speculation, barter and trade, which would infringe upon the long established rule that life insurance may not be tainted with the elements of a wagering contract, because against public policy.

We believe your position is a proper one in your interpretation of the statute that the loan in question

would be an excessive one under either of said Sections 7952 or 8032, and that assigned life insurance policies are not to be considered under either of said Sections of our statutes as "collateral security having an ascertained market value" for the purposes of security for a loan.

CONCLUSION

It is, therefore, the opinion of this Department that, assigned life insurance policies may not be used as security for a loan under Sections 7952 and 8032, R.S. Mo. 1939, as amended Laws of Missouri, 1943, page 996, and page 988, respectively, for banks or trust companies, as constituting "collateral security having an ascertained market value", and that if so used to exceed the value of the percentage of the capital of any such bank or trust company permitted to be loaned under the terms of said sections that such loan would be excessive.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General

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