BANKS & BANKING: National banks located in Missouri may pledge their assets to secure state deposits.

3-7-34

March 6, 1934.

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Hon. Richard R. Nacy
State Treasurer
Jefferson City, Missouri

Dear Mr. Nacy:

We are in receipt of your letter of February 9th, 1934, with request for an opinion, which letter of request is as follows:

> "Recently the United States Supreme Court held that National Banks have no authority to pledge securities to guarantee deposits of public funds. The ruling was made on appeal brought by the City of Marion, Illinois vs the Receiver of the City National Bank in Herrin, Illinois.
>
> Will you please advise this office, officially, whether the above decision of the Supreme Court of the United States invalidates Section 5153 and Amendments thereto, of the National Banking Acts, as amended in 1930?
>
> The opinion that I specifically request is whether or not the National Banks in the State of Missouri are permitted to deposit with the State Treasurer their securities to guarantee the deposits of the State Treasurer held by the respective National Banks."

Your letter with request for an opinion is based on the interpretation to be given to the case of City of Marion, Illinois, v. Sneeden et al., decided February 5th, 1934, by the Supreme Court of the United States and reported in the Supreme Court Reporter, Vol. 54, p. 421, and the application it may have to the Missouri statutes as to whether or not the National banks within the State of Missouri are permitted to pledge their assets and securities to the State Treasurer to secure the deposits of the State Treasurer in the respective National banks.

Briefly, the facts in the above case are as follows: Carroll was the Treasurer of the City of Marion, Illinois, and as such Treasurer was required by the Illinois statutes to give bond to the City. The Fidelity and Casualty Company became Surety under his bond under an agreement that Carroll, in turn, would deposit the public moneys of the City of Marion in the City National Bank of Herrin, Illinois, and that the bank would give satisfactory collateral security for the repayment of his deposits of the public moneys. The City National Bank of Herrin agreed to this and thereafter it delivered to the Continental Illinois National Bank and Trust Company of Chicago, as escrow agent, negotiable bonds of the par value of $23,000, under an agreement so to secure the city's deposit. The Fidelity Company executed Carroll's official bond and he deposited the city's moneys in the Herrin Bank in accordance with the agreement. The Herrin Bank thereafter became insolvent and a receiver was appointed. The Receiver, Ben Sneeden, brought suit in the Federal Court against the City, its Treasurer, the Surety, and the escrow agent, setting forth and praying in his petition that the pledge of the securities be declared ultra vires and void, and that the bonds be delivered to him as Receiver. This case ultimately reached the United States Supreme Court as the case of City of Marion, Ill., v. Sneeden, et al, supra.

I.

The Act of June 25, 1930, R. S. 5153 U. S.:

"The Act of June 25, 1930, c. 604, 46 Stat. 809 (12 USCA Sec. 90), amends section 45 of the National Bank Act of 1864 by adding thereto the following:

> 'Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safe-keeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State.'"

The question decided by this case is stated in the Supreme Court opinion, page 421, as follows:

> "The controlling question is whether Illinois has conferred upon banks organized under its laws power to pledge assets as security for deposits of public moneys of political subdivisions of the state."

And, Justice Brandeis, who wrote the opinion in this case, said:

> "For the reasons stated in Texas & Pacific Railway Co. v. Pottorff, 290 U. S. ____, 54 S. Ct. 416, 78 L. Ed. ____, decided this day, we are of opinion that the Act of 1864 did not confer the power to pledge assets to secure any public deposits except those made under section 45 by the Secretary of the Treasury of the United States. The power conferred by each later act, except that of 1930, was limited to securing specific federal funds. A national bank could not legally pledge assets to secure funds of a state, or of a political subdivision thereof, prior to the 1930 amendment; and since then it can do so legally only if it is located in a state in which state banks are so authorized. In some states national banks had, prior to the 1930 amendment, frequently pledged assets to secure public deposits of the state or of a political subdivision thereof; comptrollers of the currency knew that this was being done; and they assumed that the banks had the power so to do. But the assumption was erroneous. The contention that such power is generally necessary in the business of deposit banking has not been sustained."

It will be seen that, under the authority of the amendment of June 25, 1930, shown at Section 90, Title 12, under "Banks and Banking" in Cumulative Supplement, USCA, Vol. 12, page 30, R. S. 5153, national banks may legally pledge assets to secure funds of state or political subdivisions only if located in a state in which state banks are so authorized to pledge their assets to secure public deposit.

II.

The question which you ask is whether or not national banks in the State of Missouri are permitted to deposit with the State Treasurer its securities to guarantee the deposits of the State Treasurer of state funds deposited with national banks.

Section 15, Article X, of the Missouri Constitution provides that state funds may be deposited in selected depositaries with satisfactory security for the repayment thereof; which section is as follows:

> "All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks as he may, from time to time, with the approval of the Governor and Attorney-General, select, the said bank or banks giving security, satisfactory to the Governor and Attorney-General, for the safe-keeping and payment of such deposit, when demanded by the State Treasurer on his check--such bank to pay a bonus for the use of such deposits not less than the bonus paid by other banks for similar deposits; and the same, together with such interest and profits as may accrue thereon, shall be disbursed by said Treasurer for the purposes of the State, according to law, upon warrants drawn by the State Auditor, and not otherwise."

The depository law, with regard to state moneys, is found in Article 2, Chapter 72, R. S. Mo. 1929, and Laws of 1931, at page 378. This article provides a complete and separate scheme for the safe-guarding and protection of state moneys.

Section 11465, of said article and chapter, provides that the State Treasurer shall deposit all state moneys in such banks as he shall select, with the approval of the Governor and the Attorney-General, the banks or banking institutions giving satisfactory security for the safe-keeping and payment of such deposits upon demand by the State Treasurer.

Section 11466 provides the manner of soliciting of bids and the division of state moneys into eighty equal parts.

Section 11467 provdes for the payment of interest on the deposits by the depositories.

Section 11468 provides for the securing of the bids, how received and opened, and the manner of the selection of the state depository.

The General Assembly in 1879 passed the first act to carry out the provisions of the Constitution of 1875, to-wit, Section 15, Article X, supra. Section 11469, R. S. 1929, as amended by Acts of 1931, page 378, has been amended many times since its original enactment in 1879, and now provides in part as follows:

> "For the security of the funds deposited by the treasurer under the provisions of articles 1 and 2 of this chapter the governor, attorney-general and the treasurer shall require of said selected and approved banks or banking institutions giving security for the safe-keeping and payment of said deposits a bond equal to at least twenty-five per cent. of the amount of the accepted bid or bids, to be approved by the governor and attorney-general, and in addition thereto bonds of the United States, the state of Missouri, or in their discretion, the registered bonds of the city of St. Louis or of any other city in this state having a population of not less than two thousand, or in their discretion the

> registered bonds of any county in this state, or in their discretion the registered bonds of any school district situated in any city, town or village in this state, or in their discretion the approved registered bonds of any drainage or levee district in this state, or in their discretion the approved registered bonds of any special road district in this state, or in their discretion the registered state bonds of any state, or in their discretion the federal land bank bonds, to an amount of at least equal in value to the amount of the deposits with such banks or banking institutions; which bonds shall be delivered to the state treasurer, and receipted for by him and retained by him in the vaults of the state treasury of this state, or in the vaults of such banks or safe depository as the governor, attorney-general and treasurer may agree upon; and if in any case, or at any time, such bonds are not satisfactory security to the governor and attorney-general for deposits made under articles 1 and 2 of this chapter, they may require such additional security to be given as shall be satisfactory to them, which said bonds or any part thereof, may from time to time be withdrawn on the written consent of the governor, attorney-general and treasurer; etc."

Our state depository law provides a complete, separate and adequate scheme for securing and protecting state deposits by the depository giving a bond equal to at least 25% of the amount of the accepted bid, or bids, and in addition thereto the deposit with the State Treasurer, by the bank depository, of certain designated assets and securities of such bank, as being acceptable security, as set forth and described in Section 11469, supra.

From the decision of the United States Supreme Court in the case of City of Marion, Ill., v. Sneeden et al., supra, it will be seen that prior to the amendment of 1930, Acts of June 25, 1930, 12 USCA, Sec. 90 (Section 5153 R. S.), cited above, national banks had no authority and could not legally pledge

their assets to secure funds of a state, or its political subdivisions, and since then it can do so legally only if it is located in a state in which state banks are so authorized.

It is our opinion that the State of Missouri, having provided a complete and adequate system for the pledging of assets and securities by banks for deposit of public funds made by the State Treasurer, and it having been the statutory method recognized by the executive officers of this State enacted in pursuance of the Constitution, Sec. 15, Art. X, supra, that it comes within the purview of the Act of June 25, 1930, 12 USCA, Sec. 90 (Sec. 5153 R. S.). Therefore, under the Missouri statutes banks may give security for the safe-keeping and prompt payment of money so deposited; the national banks located in Missouri may do likewise and pledge their assets to secure state deposits under the authority of the Act of June 25, 1930, as determined by the Supreme Court of the United States in the case of City of Marion v. Sneeden, supra.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY McKITTRICK
Attorney-General

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