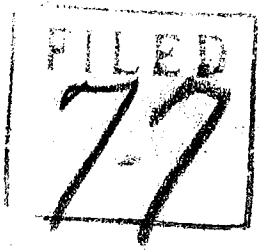
BANKS:
HUSBAND AND WIFE: Loan limit of bank to any one person set forth in Sec. 362.170 RSMo 1949 not violated by husband and wife giving their individual notes so long as note given by each does not exceed amount prescribed by said statute; and pledging of collateral owned as tenants by entirety does not make such loans a single "joint obligation."



August 23, 1955

Honorable J. A. Rouveyrol
Commissioner of Finance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Rouveyrol:

The following opinion is rendered in reply to your recent inquiry and, for purposes of brevity, we restate your fact situation and question in the following language:

> Section 362.170 RSMo 1949 limits the amount which may be loaned by a bank to any one individual, partnership, corporation or body politic. The bank in question has a loan limit of $36,600.00. Mr. "A" gave his personal note to the bank for $21,000.00 with no other signature thereon than his own. At the same time the wife of Mr. "A" gave her personal note to the same bank for $25,000.00, with no other signature thereon than her own. As security for the two notes Mr. "A" and his wife both signed one deed of trust on property which they owned as husband and wife jointly with right of survivorship. Query: Did the bank exceed its loan limit to any one individual by accepting the two notes and taking the security given?

Section 451.290 RSMo 1949 provides:

> "A married woman shall be deemed a femme sole so far as to enable her to carry on and transact business on her own account, to contract and be contracted with, to sue and be sued, and to enforce and have enforced against her property such judgments as may be rendered for or against her, and may sue and be sued at law or in equity, with or without her husband being

> joined as a party; provided, a married woman may invoke all exemption and homestead laws now or hereafter in force for the protection of personal and real property owned by the head of a family, except in cases where the husband has claimed such exemption and homestead rights for the protection of his own property."

In the light of language contained in Section 451.290 RSMo 1949, quoted above, it can be reasonably concluded that Mr. "A", as well as his wife, had the right to borrow on their own personal notes the amount the bank was willing to loan to each one of them. As to the deed of trust given to secure the notes, we deem the procedure to be in line with the following rule stated in A. J. Meyer & Co. v. Schulte, 189 S.W. (2d) 183, l.c. 189:

> "It is undisputed that the property in question was in the name of Mr. and Mrs. Schulte, who, being husband and wife, held the property as an estate by the entirety. It is established law that neither husband nor wife acting alone has power to subject to a lien property held as an estate by the entirety. During coverture an act to affect property so held must be joined in by both such tenants because such an estate is not held by moieties, or halves, but both tenants hold and own the entire estate as a single person."

Under the fact situation being considered it no doubt required the full value of the property pledged in order to secure the individual indebtedness of both Mr. "A," and his wife. To demonstrate that a pledge of collateral held jointly by two persons, individually obligated on their separate notes, does not make their note obligations a single "joint obligation," we cite the following from 41 Am. Jur., Pledge and Collateral Security, Sec. 99:

> "The taking of collateral security for the payment of a debt does not, in the absence of a statute or stipulation to the contrary, afford any implication that the creditor is to look to it only or primarily for the payment of the debt. The obligation of the debtor to respond in his person and property is the same

> as if no security had been given, and upon default in payment, the pledgee may elect to sue the pledgor for his debt, without a sale of the security, and may recover a judgment in such suit against the pledgor for the amount of the debt, without destroying or in the least affecting his lien on the property pledged."

CONCLUSION

It is the opinion of this office that a husband and wife may give their separate notes to a bank in an aggregate amount exceeding the bank's loan limit to any one person under Section 362.170 RSMo 1949, so long as the note given by each does not exceed the amount prescribed in said statute; and their pledging as collateral for such loans real estate held by them as tenants by the entirety will not make their individual obligations a single "joint obligation."

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:vlw