BANKS--holding real estate: Banks are authorized by the Constitution and statutes of Missouri to transact or permit the transacting of a safe deposit business in an adjoining room to the banking quarters, both being parts of one building, under their right to hold such real estate as is necessary and convenient to the transaction of their business, even though there is no inside entrance or door between the banking quarters and the room where the safe deposit business is transacted.

May 3, 1950

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5/4/50

Honorable H.G. Shaffner
Commissioner
Division of Finance
Department of Business and Administration
Jefferson City, Missouri

Dear Commissioner Shaffner:

This is in reply to your letter requesting an opinion upon the subject-matter contained in your letter which reads as follows:

> "A state chartered bank has an affiliated interest which has among its purposes that of giving safe deposit service. This affiliated interest is incorporated and located in a room considered the bank building, from which no inside entrance can be made to the banking quarters.
>
> "Since many banks carry on their safe deposit business within the recognized banking quarters, can the use of this room in this manner be considered other real estate?"

It will be observed by reading Section 5 of Article XI of the present Constitution of this State, respecting the right of corporations, (including banking corporations), to hold real estate and the restrictions against corporations, (including banking corporations), holding real estate, that its terms permit the perpetual holding of such real estate as is necessary and proper for carrying on the business of such corporations; and that such rights are restricted, as to other real estate, to holding of such other real estate for ten (10) years or such longer period as may be provided by general law, including such real estate as may be acquired in payment of a debt, under foreclosure or otherwise, and real estate exchanged therefor. Said Section 5 reads as follows:

> "No corporation shall engage in business other than that expressly authorized in its charter

> or by law, nor shall it hold any real estate except such as is necessary and proper for carrying on its legitimate business; provided, that any corporation may hold, for ten years and for such longer period as may be provided by general law, real estate acquired in payment of a debt, by foreclosure or otherwise, and real estate exchanged therefor."

Section 7949, Article 2, Chapter 39, R.S. Mo. 1939, provides the authority for the exercise of rights and powers of banks in this State. Among the provisions of sub-section 5 of said Section 7949 there are the following:

> "To purchase, hold or convey real property for the following purposes:
>
> "(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business from portions of which not required for its own use a revenue may be derived."

These provisions from our Constitution and statutes make clear and remove entirely from doubt the right of a banking corporation to acquire and hold real estate for the necessary and convenient transaction of its business. We do not understand your letter as questioning the right of a banking corporation to hold real estate for the necessary and convenient transaction of its business affairs, but your letter does submit the question of whether a room, in which an affiliate of a banking corporation is carrying on a part of the business, authorized by the statutes for it or for banks to carry on, which does not have an entrance or passageway between the room where the banking business proper is carried on and the room where such other business is carried on, should be considered real estate other than the bank has the right to hold as its place of business.

Your letter, in the last paragraph, states the following question:

> "Since many banks carry on their safe deposit business within the recognized banking quarters, can the use of this room in this manner be considered other real estate?"

We believe under its constitutional and statutory power to hold such real estate as is necessary and convenient in the transaction of its business, a banking corporation may itself transact any business the statutes permit such bank to transact, or permit an affiliate to transact such business, in a building upon real estate the bank has constituted its banking house. That a bank does possess the power and authority to transact, in the banking house, where the bank carries on its banking business, the safe deposit business, is made plain by our statutes. Sub-section 4 of said Section 7949 giving this power to banks reads, in part, as follows:

> "To purchase and hold the stock of any safe deposit company organized and existing under the laws of the state of Missouri and doing business on premises owned or leased by the bank: Provided, that the purchasing and holding of such stock is first duly authorized by resolution of the board of directors of the bank and by the written approval of the commissioner stating the number and amount of the shares which the bank may purchase and hold, such amount not to be less than ninety per cent of the total and not to be sold or transferred except as a whole and not to be pledged at all. * * * *."

This provision, we believe, means that, presupposing a safe deposit company was transacting business in some part of the bank's banking house and lawful place of carrying on its banking business on real estate so owned or leased by the bank, the bank would have the right to purchase and hold all of the stock of the safe deposit corporation and lawfully and properly continue the business itself. Original power also to organize to transact a safe deposit business by banks is provided in Section 8127, Article 5, Chapter 39, R.S. Mo. 1939, which reads, in part, as follows:

> "Any bank, trust or safe deposit company organized under the laws of this state, whose capital is fully paid up and unimpaired, may, with the consent of all its stockholders, accept the provisions of this article by filing with the commissioner a certificate of such acceptance, signed by its president and secretary. The consent of the stockholders to such acceptance may be in writing, or by vote of the stockholders

> at any meeting at which all the stockholders are represented, and vote in favor of such acceptance. Upon filing of such certificate of acceptance, such corporation shall thereupon become subject in all respects to the provisions of this article, and to the general laws of this state relating to corporations, with like effect as if it had been originally incorporated under the provisions of this article; * * * ."

Your letter very frankly states that the bank in question has an affiliated interest which proposes to give a safe deposit service, and that said affiliated interest is incorporated in a room considered the bank building from which no inside entrance can be made to the banking quarters. Then your question follows, whether this may be considered "other" real estate.

We understand that it is meant, where your letter states that a safe deposit business is to be carried on by the affiliate of the bank in a room "considered" the bank building, that the bank does actually own the building in which the affiliate proposes to carry on the safe deposit business. So understanding, it is plain, we believe, from reading the sections of the statutes quoted that the bank has the right to carry on this business itself, either by accepting the provisions of Article 5, as it may do under said Section 8127, supra, to carry on a safe deposit business, or by the purchase of the controlling stock under the terms of sub-section 4 of Section 7949, supra, of a safe deposit company already transacting such business. In either event, the fact that there is no door or inside entrance between the room where the safe deposit business is to be carried on, or is carried on, and the main banking room, or quarters, of the bank, would not preclude the bank or a safe deposit corporation affiliated with the bank from carrying on such safe deposit business, and the room where such safe deposit business is carried on would not, and could not, by reason of such fact be considered "other" real estate apart from the bank building. It must necessarily be considered, and is, we think, a part of real estate which the bank has the lawful right to acquire and hold in the necessary and convenient transaction of its business, including such safe deposit business, notwithstanding there is no opening between the two rooms.

CONCLUSION

In view of the powers given to banks to hold such real estate as is necessary and convenient in the transaction of their business by authority of the above cited and quoted

sections of our Constitution and sections of the statutes, it is the opinion of this Department that a room, where an affiliate of a State chartered bank transacting, and proposing to transact, a safe deposit business, which is a part of the real estate owned by the bank, is not other or separate real estate from real estate which a bank is authorized by law to hold, for the transaction of its business merely because there is no door or inside entrance from the bank room proper into the room where a safe deposit business is carried on.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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