BANKS: State chartered bank in solvent condition may, with approval of Commissioner of Finance, voluntarily dissolve under provisions of general and business corporation laws, Chap. 351, RSMo 1949.

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

Dear Mr. Shaffner:

The following opinion is rendered in answer to your request which reads as follows:

> "A state chartered bank is now considering ceasing business and has in mind the dissolution of the corporation.
>
> "It appears the only sections of the statutes which provide for the dissolution of a corporation are 361.460 through 361.480, General and Business Corporations, found on page 2715, Missouri Revised Statutes, 1949.
>
> "In the absence of provisions for dissolution in the banking laws, may we be advised how to proceed."

The reference in the second paragraph of your request inadvertently refers to Sections 361.460 to 361.480, inclusive, RSMo 1949. For the purpose of this opinion it is assumed that you intended to refer to Sections 351.460 to 351.480, inclusive, of Chapter 351, RSMo 1949, such chapter being known as The General and Business Corporation Law of Missouri.

This opinion deals solely with the right of a solvent State chartered bank to voluntarily dissolve and cease business as a banking corporation, and in no respect does the opinion deal with statutory sale, merger or consolidation of a State banking corporation.

A review of the statutes particularly applicable to State banks, as found in Chapter 362, RSMo 1949, though found to contain provisions for the liquidation of insolvent

banks and for statutory sale, merger or consolidation, does not encompass a situation where a solvent bank desires to voluntarily liquidate and surrender its corporate charter. The general rule touching this problem is found stated in 7 Am. Jur., Banks, Sec. 826, as follows:

> "Though a bank may be subject to regulation under the police power of the state, it is nevertheless a private, as distinguished from a public, corporation where its stock is owned by private persons; it owes no duty of public service, and hence may voluntarily go out of business and liquidate its holdings. Such right exists in the case of a savings bank to the same extent as in the case of any other private corporation. It is in the public interest to have savings banks successful, but that interest is no indication of public right to have them continue to do business while they remain successful. Furthermore, no legislative prohibition of a savings bank from going out of business so long as it is solvent and properly managed may be implied from statutes authorizing or requiring the liquidation of mismanaged or insolvent savings banks."

In the case of Haight v. Stewart, 278 S.W. 1091, 220 Mo. App. 78, the Springfield court of appeals was passing on the right of a State chartered bank which was solvent, though in failing condition, to liquidate its own affairs and pay off its depositors and creditors and effect dissolution under the general law applicable to private corporations. In the course of its opinion the court reviewed the case of Koch v. Missouri Lincoln Trust Company, 181 S.W. 44, and the case of Citizens Trust Company v. Tindle, 272 Mo. 681, 199 S.W. 1026, and in sustaining the right of the State chartered bank to dissolve under the general law applicable to private corporations made the following conclusions, found at 220 Mo. App. l.c. 83:

> "Considering the Koch case (supra) and in the light of the Citizens Trust Company case (supra) we hold that a bank which is solvent, although in a failing condition,

> has authority to liquidate its own affairs and pay off its depositors and creditors, at least when so directed by the state banking commissioner as in this case. This is in harmony with the spirit of the State Banking Act as we interpret it. After the depositors and creditors have been paid, and the bank has closed its doors, there is nothing pertaining to the final dissolution of the corporation which should require action from the banking commissioner. The whole purpose of the act was to secure honest and economical administration of the assets of the bank and the Trust Company case (supra) so holds. That purpose having been fulfilled under orders from the banking commissioner, the bank should have authority to secure dissolution in the most expeditious and inexpensive way possible. Changing possession merely for the purpose of dissolution would necessarily entail additional expense and serve no useful purpose."

The ruling in the Haight case cited above serves to draw attention to the duties of the Commissioner of the Division of Finance insofar as he is to safeguard the positions of depositors and creditors of banks operating under the State Banking Act, while at the same time recognizing the right of a State banking corporation to dissolve under the general and business corporation law of Missouri, when any such bank is in a solvent condition.

CONCLUSION

It is the opinion of this department that a State chartered bank enjoying a position of solvency may, with the approval of the Commissioner of the Division of Finance, voluntarily dissolve and extinguish its corporate existence under procedures outlined in Chapter 351, RSMo, 1949, providing for the voluntary dissolution of general and business corporations.

Respectfully submitted,

APPROVED:

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