

BANK HOLIDAYS: Bank holidays may be fixed by banking institutions in Missouri or changed after being fixed by the adoption at least 15 days in advance thereof, of a resolution to such effect by a majority vote of the Board of Directors thereof and posting notice thereof in the bank or trust company for the same time. Holiday must be on a certain day of each week of the year.

September 18, 1950



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

Dear Commissioner Shaffner:

This will supply the opinion you requested in your recent letter respecting the selection and adoption of a weekly bank holiday by banking institutions in Missouri. Your letter follows:

"In connection with Section 3100, R. S. Missouri, 1939, as amended by Laws of Missouri 1947, Volume I, page 221 and the Bank Holiday Statute as found at page 310 of the same volume, will you please provide me with your opinion on the following:

"1. May a bank which has not taken any action under these statutes to close on any particular day, close on one day such as Wednesday, August 16? This question assumes that the Board of Directors of the bank adopts an appropriate resolution and that the notice required by the statutes is posted the requisite period in advance.

"2. May a bank which has taken appropriate action under these statutes so as to be closed on each Friday (or Saturday or any other day of the week as the case may be) discontinue this closing and close on one day such as Wednesday, August 16 and thereafter resume closing on the same day of each week, say each Friday or each Tuesday as the case may be? This question

Honorable H. G. Shaffner

assumes that the Board of Directors of the bank adopts appropriate resolutions and that the notice required by the statutes is posted for the requisite period in advance."

The new bank holiday statute, Laws of Missouri, 1947, Volume I, page 310, upon the provisions of which our opinion is requested, reads as follows:

"Any bank or trust company organized under the laws of the State of Missouri, or any national bank doing business in Missouri, may remain closed on any Sunday or public holiday, as defined in Section 15310 of the Revised Statutes of Missouri, 1939, and, in addition, on any day of the week fixed at least fifteen days in advance by the adoption of a resolution to such effect by a majority vote of the Board of Directors thereof, and notice thereof posted in the bank or trust company for the same time. Any day on which such bank or trust company organized under the laws of the State of Missouri or national bank doing business in Missouri shall, pursuant to such vote and notice, remain closed, shall, with respect to such bank or trust company or national bank, be deemed a holiday for the purposes of Chapter 14 of the Revised Statutes of Missouri, 1939, and amendments thereto, and no such bank or trust company or national bank shall be required to permit access to its safe deposit vaults on such day. Where a contract by its terms requires the payment of money or the performance of a condition on any such day by or at such bank or trust company or national bank, such payment may be made or condition performed on the next business day succeeding such day when such bank, trust company or national bank shall so remain closed, with the same force and effect as if made or performed in accordance with the terms of the contract."

This statute was enacted by the Legislature in aid and support of and is an extension of the provisions of Section 3100 of Article 1, Chapter 14, R. S. Mo. 1939, as amended, Laws of Missouri, 1947, pages 221, 222, relating to bills and notes, under

Honorable H. G. Shaffner

our negotiable instruments statutes, as the certification and acceptance of such instruments are to be affected by holidays, Said Section 311, as amended, Laws of Missouri, 1947, pages 221 and 222, reads as follows:

"Every negotiable instrument is payable at the time fixed therein, without grace. When the day of maturity falls upon a Sunday, Saturday or holiday, or on any day on which the office at which the negotiable instrument is payable, is closed by law or custom of such office, evidenced by a notice posted in said office for at least 15 days, the instrument is payable on the next succeeding business day, except that the payment, certification or acceptance of any check or other negotiable instrument or any other transaction by any bank, trust company or other person in this State at any time on Saturday or on any day on which the office of the particular bank, trust company or other person is closed by its custom (evidenced as aforesaid) if said payment, certification or acceptance or other transaction would otherwise be valid, shall be valid and binding upon all parties. No office which by its custom (evidenced as aforesaid) closes on any particular day or at a fixed hour on any particular day, shall be required to remain open on that day or after that hour for the transaction of business or to pay or accept payment of any check, note or other negotiable instrument or perform any other transaction."

We shall keep in mind and have before us also in the construction of the bank holiday statute the two related sections, Section 3161, Article 2, Chapter 14, Laws of Missouri, 1947, page 222, and Section 3212, Article 5, Chapter 15, R. S. Mo. 1939. These two sections read, respectively, as follows:

"A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of Section 3087 and 3100 of this chapter."

"Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day."

Honorable H. G. Shaffner

Your letter, in two paragraphs, should be answered in like manner, we believe, first giving attention to paragraph 1.

The intention of the Legislature in the enactment of said statute was and is, we believe, that the selection and fixing of any bank holiday upon which a bank may remain closed, in addition to Sundays and public holidays as defined in Section 15310, Chapter 131, R. S. Mo. 1939, must be on a definite day of each week in each month of the calendar year.

The statute is express in its terms providing the method for fixing a bank holiday. The section reads: "Any bank or trust company organized under the laws of the State of Missouri, or any national bank doing business in Missouri may remain closed \* \* \* \* on any day of the week fixed at least fifteen days in advance by the adoption of a resolution to such effect by a majority vote of the board of directors thereof, and notice thereof posted in the bank or trust company for the same time." Where a statute directs the performance of certain things in a particular manner, or by a particular person, it implies that it shall not be done otherwise nor by a different person (59 C.J. 984; State ex rel. v. Holtcamp, 322 Mo. 258).

The purpose of this statute is, it would reasonably appear, to provide a method for establishing a holiday by banks and trust companies for the benefit of the personnel of an institution doing a banking business in this State and to serve a public purpose as well, so that if and when such a holiday is fixed by such institution, it must be after the interested public is notified thereof and of a definite day of the week therefor, fixed as provided for in this statute.

We believe that said section means, and the Legislature intended it should mean, that if a bank or trust company doing business in Missouri desires to establish a holiday, it must be upon a definite day--any day, except Sunday--of each week, so that the holiday will be a weekly holiday, fixed at least fifteen days in advance of the adoption by a majority vote of the Board of Directors of such bank, a resolution fixing such holiday, and the posting of a notice in such bank or trust company for fifteen days that the bank or trust company has fixed such holiday on such day of the week. This is our view and conclusion on the question submitted in paragraph 1 of your letter.

As we read and understand paragraph 2 of your letter, it assumes a theoretical case where an institution doing banking business in this State has fixed a definite weekly holiday, taking as an example Friday of a week, or any other day of a week, in obedience to the terms of the said bank holiday statute. Then it submits the question, could such institution, so having selected

Honorable H. G. Shaffner

such weekly holiday, discontinue the closing of the institution on that day of the week, and select as a holiday and close on another day of the week, and, so having changed the first selected holiday to a secondly selected day of the week for such holiday, then may the holiday selected as a second choice be abandoned by the institution, and may it resume closing on the first selected holiday in the given example?

The change from a day already fixed by a banking institution as a weekly holiday to a secondly fixed weekly holiday, and, thereafter, a change back to the first fixed weekly holiday could not lawfully be accomplished, we believe, unless and until at least fifteen days in advance thereof a resolution of the Board of Directors of the institution was passed so selecting such holiday and notice thereof for the same time, before any and all changes thereof, be posted in the banking institution, all as required by the statute.

#### CONCLUSION

It is, therefore, the opinion of this Department that:

1) Any institution, authorized to do banking business in Missouri, including trust companies and national banks, which has not taken any action under our present bank holiday statute, Laws of Missouri, 1947, page 310, may fix as a bank holiday and remain closed on that day of the week, any day of the week except Sundays, fixed at least fifteen days in advance, by the adoption of a resolution to such effect by a majority vote of the Board of Directors thereof, and by posting notice thereof in the bank or trust company or national bank for the same time.

2) That where an institution doing banking business in Missouri has previously taken action and fixed a weekly bank holiday, under the provisions of our present bank holiday statute, Laws of Missouri, 1947, page 310, desires to change its weekly holiday it may select any other day of the week as such holiday and discontinue the closing on the day of the week first selected, and close as and for such holiday on the secondly selected day, and may thereafter, if it so desires, abandon the secondly selected day of the week as a holiday and change back to the first weekly holiday so fixed, by complying with the requirements of the statute.

APPROVED:

Respectfully submitted,

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