

BANKS: Notice to stockholders, as required by Sec. 363.840 RSMo 1949, whereby a merger of banking institutions is to be effected, is to be followed in lieu of notice required by Section 363.500 RSMo 1949.



April 18, 1958

Honorable G. H. Bates
Commissioner of the Division of Finance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Bates:

This opinion is rendered in reply to your recent request reading as follows:

"Pursuant to Section 362.235 RSMo. Cumulative Supplement 1957, and Section 363.830 RSMo. 1949, I have certified my approval of an agreement to merge between a National bank located in this state and a State trust company having banking powers. A copy of such agreement to merge is attached hereto.

"Section 363.840 RSMo. 1949 provides that the agreement to merge must be submitted to stockholders of the two merging institutions within sixty days following my approval of the agreement to merge.

"Your opinion is requested to determine if the two weeks' notice required by Section 363.840 RSMo. 1949, will suffice for the sixty day notice required by Section 363.500 RSMo. 1949 when a trust company seeks to avail itself of privileges provided for in Chapter 363 RSMo. 1949 which ordinarily entail an amendment to articles of incorporation."

The basic legislative enactment in Missouri authorizing the type of merger referred to in the above inquiry is Section 362.235 RSMo Cum. Supp. 1957, with subsection 1 of such statute providing, in part:

Honorable G. H. Bates

"1. Any national banking association incorporated under the laws of the United States having its place of business in this state may be * * * merged with one or more banks or trust companies incorporated under the laws of this state under the charter of a bank or trust company incorporated under the laws of this state, upon compliance with the laws of the United States in such cases made and provided and upon obtaining the approval of the commissioner of finance of the state of Missouri.
* * * "

In consummating the merger with which we are dealing, the legislature has directed in what manner it is to be accomplished, in the following language from subsection 4 of Section 362.235 RSMo Cum. Supp. 1957:

"In the case of consolidation or merger the same shall be consummated by each national banking association complying with the laws of the United States thereto relating, and also by each national banking association and each bank or trust company complying with the provisions of the laws of this state relating to the consolidation or merger of trust companies, except that it shall not be necessary for a national banking association to obtain the consent of its shareholders in the manner provided by such law of this state,
* * * ."

The language quoted above from subsection 4 of Section 362.235 RSMo Cum. Supp. 1957, is direct and positive in its directive specifying that the manner of consummating the merger be that manner found spelled out in "the laws of this state relating to the consolidation or merger of trust companies." Provisions of the laws of Missouri relating to the consolidation or merger of trust companies are found at Sections 363.770 to 363.970 RSMo 1949.

Section 363.840 RSMo 1949 sets forth procedure to be followed when approval of the agreement to merge has been given by the Commissioner of Finance, and such statute is herewith quoted in full:

Honorable G. H. Bates

"1. In case of approval by the finance commissioner, such agreement shall within sixty days after the date of such approval be submitted to the stockholders of each trust company which is a party to such merger or consolidation.

"2. The meeting of the stockholders of each such trust company for said purpose shall be called upon notice specifying the time, place and object thereof, addressed to each stockholder at his last known post-office address and deposited, postage prepaid, in the post office at least two weeks prior to such meeting, and such notice shall be likewise published once a week for at least two successive weeks in at least one newspaper in each of the counties in which any of such trust companies has its place of business, and for the purpose of such notice the city of St. Louis shall be considered as a county."

Section 363.840 RSMo 1949, quoted above, discloses the scope of the notice to stockholders, the method of bringing such notice to the attention of the stockholders, and specifies that the proposition shall be submitted to a vote within sixty days after approval of the agreement to merge has been given by the Commissioner of Finance.

In your letter of inquiry, you have referred to Section 363.500 RSMo 1949, which provides:

"1. Whenever any trust company shall desire to call a meeting of its shareholders for the purpose of availing itself of the privileges and provisions of this chapter, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, or the length of its corporate life, the directors shall publish a notice, in a newspaper published in the county or city, if any shall be published therein, and mail a copy of such notice, postage prepaid, addressed to each stockholder at his usual place of residence.

Honorable G. H. Bates

"2. The notice shall be signed by at least a majority of the directors, and shall specify the object and time and place of the meeting and the proposed changes.

"3. The notice shall be published at least sixty days prior to the meeting and once a week after the first publication. It shall be mailed at least sixty days prior to the meeting."

While Section 363.500 RSMo 1949, quoted supra, is contained in Chapter 363 RSMo 1949, the law particularly applicable to trust companies, it must be viewed as a law of general application to trust companies when we consider Sections 363.770 to 363.970, of the same Chapter 363, setting up a special procedure for merger of trust companies. At this point, we cite language found at 82 C.J.S., Statutes, Sec. 369:

"For purposes of interpretation, legislative enactments have long been classed as either general or special, and given different effect on other enactments dependent as they are found to fall into one class or the other. Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute, according to the authorities on the question, unless it appears that the legislature intended to make the general act controlling; and this is true a fortiori when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage."

The foregoing quotation from text of 82 C.J.S., Statutes, is well supported by language found in *State v. Richman*, 347 Mo. 595, l.c. 601, 148 S.W.(2d) 796, as follows:

Honorable G. H. Bates

"In State v. Harris, 337 Mo. 1052, 1058, 87 S.W.(2d) 1026, we said that if statutes are necessarily inconsistent that which deals with the common subject matter in a minute and particular way will prevail over one of a more general nature; * * *."

A reading of Sections 363.500 and 363.840 RSMo 1949 in relation to the subject of notice to stockholders points up a patent repugnancy. Under Section 363.840 RSMo 1949 of the merger procedure, it is mandatory that stockholders act on the plan of merger within sixty days after approval of said plan by the Commissioner of Finance. Under Section 363.500 RSMo 1949, a trust company desiring to avail itself of any of the privileges enumerated in Chapter 363 RSMo 1949 applicable to trust companies, must publish a notice of stockholders' meeting sixty days prior to the meeting. It is impossible to meet the publication requirement found in Section 363.500 RSMo 1949, within the prescribed time made mandatory by Section 363.840 RSMo 1949, and therein we find repugnancy. For this reason it must be concluded that publication of notice to stockholders as required by Section 363.840 RSMo 1949, whereby a merger of banking institutions is to be effected, is to be followed in lieu of notice required by Section 363.500 RSMo 1949.

CONCLUSION

It is the opinion of this office that notice to stockholders, as required by Section 363.840 RSMo 1949, whereby a merger of banking institutions is to be effected, is to be followed in lieu of notice required by Section 363.500 RSMo 1949.

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

Yours very truly,

John M. Dalton
Attorney General

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