

**BANKS & BANKING:** Records and files in possession of Commissioner of Finance for defunct banks, open for inspection of interested parties.

11-1

October 24, 1934.



Hon. O. H. Moberly  
Commissioner of Finance  
Jefferson City, Missouri

Dear Mr. Moberly:

We acknowledge receipt of your letter of recent date with request for an opinion, which letter is as follows:

"This Department from time to time has numerous requests, particularly from attorneys representing depositors, to inspect the files of this Department in connection with the various closed banks and trust companies in our hands for liquidation. Will you please advise us if, immediately upon being placed in liquidation, the files of this office regarding that particular bank become public and open to inspection by the public."

Section 5291, R. S. Mo. 1929, provides as follows:

"The commissioner of finance, his deputies, clerk, stenographer, each examiner and every employe shall be bound, under oath, to keep secret all facts and information obtained in the course of all examinations, except so far as the public duty of such officer requires to report upon or take special action regarding the affairs of any bank, private banker, savings and safe deposit company or trust company, and except when he is called as a witness in any proceeding in a court of

"justice. If any commissioner of finance, deputy, clerk, stenographer or examiner shall disclose the name of any debtor of any bank, private banker, savings and safe deposit company or trust company, or anything relative to the private accounts, affairs or transactions of such bank, private banker, savings and safe deposit company or trust company, or shall disclose any facts obtained in the course of his or their examination of any such bank, private banker, savings and safe deposit company or trust company, except as herein provided, he shall be deemed guilty of misdemeanor and upon conviction thereof shall be subject to a forfeiture of his office and the payment of a fine of not more than one thousand (\$1,000.00) dollars; provided however, that the commissioner of finance, his deputies and each examiner may exchange information with the federal reserve board, the federal reserve banks, or with examiners duly appointed by the federal reserve board, or by the federal reserve banks, the comptroller of currency of the United States, or with examiners duly appointed by him, the bank clearing house in the state of Missouri and examiners duly appointed by them, when the department of finance, the federal reserve board, the federal reserve banks, the comptroller of currency of the United States, and for the bank clearing houses in the state of Missouri have participated jointly in making an examination of the affairs of any bank, private banker, savings and safe deposit company or trust company, and such exchange of information is necessary to enable each agency participating in said examination to obtain and secure a complete report of said examination; and provided further, that the bank commissioner, his deputies and examiners shall, with respect to all banks, trust companies and savings companies in which state

"funds are on deposit, furnish to the state treasurer access to reports of all examinations made, of such institutions, and shall upon request from the state treasurer, disclose to him any information or facts with reference to the condition of the affairs of any such bank, trust company or savings company, obtained in the course of any such examination, which the state treasurer may desire to know; and the state treasurer, his deputies, clerks and stenographers shall be under the same obligation to keep secret all facts and information thus obtained as is by this section imposed upon the bank commissioner, his deputies, clerks, stenographers and examiners, and for a violation of such duty they shall be deemed guilty of a misdemeanor and subject to the penalty herein provided; and provided further, that reports shall be made of the condition of the affairs of a bank, private banker, savings and safe deposit company or trust company, ascertained from such examination to the officers and directors of the bank, private banker, savings and safe deposit company or trust company, examined, and to the bank commissioner."

The Supreme Court of this State in the case of *Millspaugh v. Kesterson*, 270 S. W. 110, l. c. 112, in discussing this section said the following:

"Taking the whole act of which this particular section forms a part, it must be concluded that the secrecy imposed was for the protection of banking interests and their patrons. This petitioner has in his possession books and papers belonging to a defunct bank, the assets of which were absorbed by the plaintiff bank in the circuit court case. The purpose of the law was not to hide legitimate evidence when the same is required by the courts in the disposition of even and exact justice as between litigants. We do

"not believe that it was the intent of the lawmakers, by the language used, to preclude the use of such facts as the commissioner of finance might possess in the disposition of justice in a court having on trial a civil case."

Also, in the case of Ex Parte French, 315 Mo. 75, 285 S. W. 513, l. c. 516, the Supreme Court decided that the Commissioner of Finance was required to produce in court, upon proper subpoena, the records and files of his office pertaining to certain failed banks in his possession for purposes of liquidation, and the court said, speaking through Judge White, the following:

"The only theory upon which the commissioner can be restrained from divulging what he learns in his examination of banks, and from producing in court the records in his custody, is on the ground of public policy; that some public interest may be adversely affected by the revelations which would ensue. We are unable to conceive of any reason why general knowledge of the affairs of a defunct bank discovered in a trial in court would injuriously affect the public morals, public health, or public safety. What public interest can be served by concealing the methods by which banks are guided to destruction by those intrusted with their control? Ordinarily, we would say the public is entitled to know all about the inside jobs which cause banks to fail, because through such knowledge the people's representatives may apply a remedy for the conditions revealed. So far as appears on the surface, the only persons served by concealment of such condition would be those concerned in bringing it about."

We are, therefore, of the opinion that the files and records in your Department pertaining to failed banks and trust

Hon. O. H. Moberly

-5-

Oct. 24, 1934.

companies in your hands for purposes of liquidation, may be inspected by litigants and other parties at reasonable times.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

---

ROY McKITTRICK  
Attorney-General.

CRH:EG