

SECURITIES COMMISSION: Deposit of Fidelity Investment
Association not subject to law
relative to deposits of State money.

April 20, 1942

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Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

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Dear Sir:

This will acknowledge receipt of your letter of
March 10, 1942, which is as follows:

"The Fidelity Investment Association, a West Virginia corporation, since about 1912 has been engaged in the business of selling its own securities in the form of investment contracts of various types and the investment of funds received from purchasers of such contracts so as to provide for their payment at maturity, according to their terms, or for the payment of specified cash values at various stages in the life of the individual contract, as required by the purchaser. This company by its charter operated under the provisions of what is now Article 9 of Chapter 33, of the Code of West Virginia relating to annuity contracts. These contracts are of a type commonly called 'face amount certificates' in that same promised the payment of a certain specified sum of money at maturity provided the purchaser paid all the installments of his contracts to maturity. The purchaser, if he completed his contract, received a net return on the money invested, which ranged from 1.55% to 3.09% depending on the type of contract. The cash values on such contracts were so fixed that it was not until the purchaser

had paid all of the first year's installments that his contract was given any cash value whatever. Thereafter, it acquired a cash value, which increased proportionately as the years passed; but the cash value did not equal the total amount paid in by the purchaser until the end of a period varying from six to nine years, again depending on the type of contract. The contracts were matured when monthly installments had been paid for a period of 10 to 11 years with a subsequent waiting period of three to 15 months. While the various types of investment contracts sold by said company differ in some respects, they are all alike in providing for monthly, semi-annual or annual payments of specified sums of which a sufficient portion was to be set aside in a reserve fund which was to produce the sum required to pay the purchaser the amount agreed upon in the contract. All such contracts provided that the reserve fund so set aside should 'be invested in approved securities and deposited in trust as required by the laws of the state of West Virginia.'

"Since about 1928 said Fidelity Investment Association from time to time has complied with the laws of the State of Missouri in that it has registered in the office of the Commissioner of Securities under the provisions of the Missouri Securities Act, now Chapter 41, Revised Statutes of Missouri, 1939, all of its various types of investment contracts sold to the public in this state. Under the terms of a contract entered into by and between the said Fidelity Investment Association and the Commissioner of Securities of the State of Missouri, said company agreed to

and did maintain a deposit of securities for the purpose of securing the payment of the net outstanding liability of said company on contracts sold in the State of Missouri. The amount of securities on deposit varied from time to time, but was always of an amount in value sufficient to pay the outstanding net liability of said company in this state by reason of contracts so sold. The deposit of securities was maintained with the Wheeling Dollar Savings & Trust Company at Wheeling, West Virginia and consisted largely of railroad, industrial and utility bonds.

"On June 6, 1941, said Fidelity Investment Association filed a voluntary petition in the United States District Court for the Southern District of West Virginia, for reorganization under the provisions of Chapter 10, of the Federal Bankruptcy Act. Immediately thereafter the Central Trust Company of Charleston, West Virginia was appointed trustee to take charge of all property, assets and business of the company and to conserve its assets and operate the business until such time as either a plan of reorganization was adopted or it be determined that reorganization is impossible and not for the best interest of the creditors of said petitioner.

"At the time of the filing of said petition in said United States District Court for the Southern District of West Virginia, and the appointment of the said Central Trust Company as such trustee, there was on deposit in the Wheeling Dollar Savings & Trust Company of Wheeling, West Virginia, certain bonds as above stated of an aggregate value at the market of approximately \$786,000.00. These bonds were so deposited in accordance with the terms of the contract

herein above referred to between the Commissioner of Securities of the State of Missouri and the Fidelity Investment Association.

"Subsequent to the filing of said petition and the appointment of the trustee, and on the 9th day of August 1941, the United States District Court for the Southern District of West Virginia made and entered an order of record in said cause by the terms of which order, the said Wheeling Dollar Savings & Trust Company was directed to surrender said securities to the Commissioner of Securities of the State of Missouri. Subsequent to entering of said order, the Wheeling Dollar Savings & Trust Company of Wheeling, West Virginia delivered said bonds to the Commissioner of Securities of the State of Missouri, which were deposited immediately by him with the Central Missouri Trust Company of Jefferson City, Missouri, for safekeeping. On August 9, 1941, the United States District Court for the Southern District of West Virginia, made a further order in said proceedings for corporate reorganization by the terms of which, it is adjudged and ordered that the Commissioner of Securities of the State of Missouri and all other persons and officials having in their possession, custody or control any property of any kind or character for the purpose of securing the creditors or contract-holders of said Fidelity Investment Association against loss occasioned by default in the payment of the amounts payable under said contracts, or for any other purpose, and their agents and employees, are enjoined and restrained from selling, assigning, concealing, encumbering, transferring or otherwise disposing of any of said property. From time to time since said bonds were de-

livered to the Commissioner of Securities of the State of Missouri pursuant to said order of court, the said Commissioner of Securities in accordance with the orders and directions of the court and the said Central Trust Company, Trustee in said proceedings for corporate reorganization, has sold or otherwise disposed of portions of said deposit of securities and has reinvested the proceeds as directed by said trustee. He also has collected the interest due on said bonds from time to time as same was payable. As a consequence of such sales and collections the said Commissioner of Securities from time to time has had in his possession substantial amounts in cash as a part of such deposit and has deposited same in an account with said Central Missouri Trust Company in his name as Commissioner of Securities of the State of Missouri.

"In view of the foregoing, will you kindly favor me with your opinion with respect to the following questions.

- "1. - Are such deposits of moneys with said Central Missouri Trust Company, state funds within the meaning of Section 15, Article 10 of the Constitution of the State of Missouri, and are such deposits governed by the provisions of Article 2, of Chapter 87, Revised Statutes of Missouri 1939, relating to depositories of state moneys?
- "2. - Is the Commissioner of Securities of the State of Missouri charged with any responsibility with respect to said deposits of moneys other than to follow the orders and directions of the

United States District Court for the Southern District of West Virginia and of the Central Trust Company, Trustee in said reorganization proceedings, and if so, what additional duty, burden or responsibility is placed upon him by the laws of the State of Missouri with respect to such deposits?"

Section 43, Article IV of the Constitution provides:

"All revenue collected and moneys received by the State from any source whatsoever shall go into the treasury, * * * * *"

In State ex rel. Thompson v. Board of Regents, 264 S. W. 698 (Mo. Sup.), the court in speaking of this section said, 1. c. 700:

"* * * By revenue, whether its meaning be measured by the general or the legal lexicographer, is meant the current income of the state from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources, as our numerous statutes attest, but no matter from what source derived, if required to be paid into the treasury, it becomes revenue or state money; its classification as such being dependent upon specific legislative enactment, or, as aptly put by the respondent, state money means money the state, in its sovereign capacity, is authorized to receive, the source of its authority being the Legislature. * * * * *"

Under this construction there can be no doubt that these funds are not required to be paid into the treasury under the above section. They are not for the support of the government, and therefore, are not included.

Supplementing Section 43, supra, is Section 15, Article X of the Constitution, which provides:

"All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks as he may, from time to time, with the approval of the Governor and Attorney General, select, the said bank or banks giving security, satisfactory to the Governor and Attorney General for the safekeeping and payment of such deposit, * * * * *"

In State ex rel. Stevenson v. Stephens, 136 Mo. 537, the court, in dealing with this section and another, said at l. c. 547:

"It is manifest that these provisions only apply to money 'belonging to the state.' The money in question, though it was deposited with the treasurer, was for the specific purpose of making good the security intended for the protection of those dealing with bond investment companies, and was not money belonging to the state within the meaning of the constitution. * * * * *"

It is, therefore, clear that these funds are not comprehended within the language of Section 15, Article 10, be-

cause they do not belong to the state. The funds "belong" to the Fidelity Investment Association and have only been deposited with the State for the purpose of securing the payment of the contracts sold by said corporation in this state.

The provisions of Article II, Chapter 87, R. S. Missouri, 1939, apply only to those funds comprehended within the terms of Section 15, Article X of the Constitution. Therefore, what we have heretofore said as to that provision disposes of this inquiry.

Therefore, in answer to your first question, we are of the opinion that the deposits of money now in the Central Missouri Trust Company are not governed by the provisions of Section 43 of Article IV, or of Section 15 of Article X of the Constitution, or of the provisions of Article II of Chapter 87, R. S. Missouri, 1939.

On your second question, it appears that this corporation has applied for reorganization under 11 U.S.C.A. 501, et seq. on Corporate Reorganization. Section 511 of this Title provides:

"Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property, whenever located."

You advise that the Federal Court in which the petition for reorganization was filed has "adjudged and ordered that the Commissioner of Securities of the State of Missouri and all other persons and officials having in their possession, custody or control any property of any kind or character for the purpose of securing the creditors or contractholders of said Fidelity Investment Association against loss occasioned by default in the payment of the amounts payable under said contracts, or for any other purpose, and their agents and employees, are enjoined and restrained from selling, assign-

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ing, concealing, encumbering, transferring or otherwise disposing of any of said property." That order, under 11 U. S.C.A. 511, is clearly within the authority of the Federal Court and it is apparent that said court has assumed full control over said fund.

Therefore, we are of the opinion that when the Securities Commissioner of Missouri complies with the orders of the Federal Court, with respect to this fund, he discharges all responsibility which the law places upon him with respect thereto. We are not aware of any other law of the State which attempts to place any duties or burdens upon the Securities Commissioner, with respect to such funds, and if such did exist we are of the opinion it would be inapplicable because these funds are now subject to the jurisdiction and control of the Federal Court.

Respectfully submitted,

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Assistant Attorney-General

LLB/rv

APPROVED:

ROY MCKITTRICK
Attorney-General