

SAVINGS AND LOAN SUPERVISION: Supervisor and assistants not entitled to pay from January 12, 1946 to January 28, 1946.



April 23, 1946

Honorable F. M. Horton, Supervisor
Division of Savings and Loan Supervision
State Office Building
Jefferson City, Missouri

Dear Sir:

Receipt of your request for an opinion is hereby acknowledged and reads as follows:

"We have been requested by the Auditor's Office to ask the opinion of the Attorney General regarding pay for the Supervision of Savings and Loan, from the time the old Bureau of B. & L. Supervision was abolished to the confirmation by the Senate of Mr. F. M. Horton as Supervisor of the new Division of Savings and Loan Supervision (Mr. Horton was also Supervisor of the defunct Bureau) - Jan. 12 to Jan. 28, 1946.

"The entire force worked during the 'interregnum,' not even the sponsors of the bill, H. B. #481, having realized that there might be the gap between the old and the new.

"Please also furnish the Auditor's office with a copy of the opinion herein requested."

House Bill 481 has been in full force and effect since the date of its approval by the Governor on January 12, 1946, due to the fact of an emergency clause included therein.

Among other sections of the statutes which were repealed by House Bill 481 was Section 8193, R. S. Mo. 1939,

which section created the Bureau of Building and Loan Supervision, and in its stead the Division of Savings and Loan Supervision was created. Section 3 of House Bill 481 provides:

"There is created a state division of savings and loan supervision, which shall be under the management and control of a chief officer who shall be called the supervisor of savings and loan associations. The supervisor of savings and loan associations shall maintain his office at Jefferson City, Missouri, and shall devote all of his time to the duties of his office. The board of the permanent seat of government shall provide the supervisor of savings and loan associations and the state division of savings and loan supervision with suitable office rooms."
(Underscoring ours.)

With regard to the repeal and reenactment of statutes bearing upon the same subject matter, the rule was adopted in Missouri in the case of Belfast Investment Co. v. Curry, 175 S. W. 201, 264 No. 483, l. c. 496, as follows:

"The usual rule is that when part of a former act is repeated in an amendatory statute, the provisions thus repeated are considered as a continuation of the former law, and not as a new enactment; while those parts of the original act which are omitted from the amendment are treated as repealed. This rule is announced by Lewis-Sutherland in the second edition of his work on Statutory Construction, vol. 1, pp. 442-3, as follows:

"The amendment operates to repeal all of the section amended not embraced in the amended form. The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts or the changed

portions are not to be taken to have been the law at any time prior to the passage of the amended act."
(Underscoring ours.)

It may therefore be said that the Legislature has established a wholly new state agency by Section 3 of House Bill 481. This is especially true by the wording of this section, which commences "There is created a state division of savings and loan supervision," which establishes the intent of the Legislature that this division shall be a new agency.

Thereafter, Section 4 of House Bill 481 provides:

"The supervisor shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold office at the pleasure of the Governor. No person shall be eligible for appointment to such office unless he has had at least two years experience as director, officer, employee or examiner of savings and loan associations."

Until such time as the new supervisor is appointed there can be no one in a position who is to be recognized as having title to that office.

You have stated in your request that "the entire force worked during the 'interregnum,'" and in the process of doing such work no doubt undertook to accomplish the ordinary business of the Division of Savings and Loan Supervision. It therefore becomes pertinent to determine the status of those who were carrying on this work.

Section 6 of House Bill 481 provides:

"The supervisor, with the approval of the Governor, shall appoint such assistants including not to exceed six examiners, and such clerks, stenographers and other necessary employees as he shall deem necessary to properly discharge the duties of his office. Each such assistant shall perform such duties as the supervisor

shall require, devote all of his or her time to such official duties and hold office at the pleasure of the supervisor. One-half of said examiners shall be members of and affiliated with the political party casting the highest number of votes for governor at the last preceding state election and one-half of said examiners shall be members of and affiliated with the party casting the next highest number of votes in this state for governor at the last preceding state election."

None of the assistants or other employees referred to in this section could be appointed until after the supervisor had been approved by the Senate because until then there was no one in a position to make such appointments.

Conclusion

It is, therefore, the opinion of this department that Mr. F. M. Horton is not entitled to be paid as Supervisor of the Division of Savings and Loan Supervision between the dates of January 12, 1946 and January 28, 1946, because until the latter date he had not been confirmed by the Senate as required by Section 4 of House Bill 481.

It is our further opinion that the assistants and other employees of the Division of Savings and Loan Supervision are not entitled to be paid as such between the dates of January 12, 1946 and January 28, 1946, because they could not be appointed under Section 6 of House Bill 481 until the Supervisor was confirmed by the Senate.

Respectfully submitted,

J. MARTIN ANDERSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General