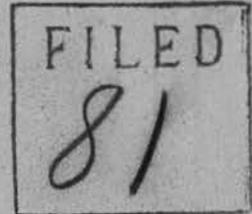


UNCLAIMED BANK DEPOSITS: The Commissioner of the Division of Finance in Missouri may not lawfully pay to one creditor or depositor unclaimed deposits remaining in his custody upon the liquidation of a bank or trust company to the exclusion of other creditors or depositors having claims against such fund. The Commissioner must, under Section 7898, R.S. Mo. 1939, after such unclaimed deposits have been held by him for a period of more than six years pay the same to the Escheat Fund of the State.

June 14, 1948

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



Dear Commissioner Shaffner:

This will refer to your letter of recent date requesting an opinion from this Department on the question of whether you shall deliver to the Reconstruction Finance Corporation unclaimed deposits amounting to \$1,433.92 remaining in your custody upon the liquidation of the Bartlett Trust Company of St. Joseph, Missouri, on account of the fact that the R.F.C. loaned the Bartlett Trust Company sums of money during the liquidation to pay depositors, all of which sums were not repaid to the R.F.C., upon its claim that it is a creditor of said defunct Trust Company, and is entitled to all of said sum, or whether you shall, under the terms of Section 7898, R.S. Mo. 1939, deliver said sum to the State Treasurer of the State of Missouri to be deposited in the Escheat Fund of this State.

Your letter is as follows:

"You will note by the attached copies of letters received from the Reconstruction Finance Corporation that Mr. Rufus Burrus, Agency Counsel, requests payment be made to that agency of the \$1,433.92 representing proceeds of a loan made by the Reconstruction Finance Corporation to the Bartlett Trust Company to pay off deposits, but which depositors have not claimed their deposits.

"In my letter of April 21 I advised that I knew of no authority which would permit the payment to the Corporation the amount claimed, since it represented unclaimed dividends now to be escheated to the State of Missouri.

"May I be favored with your official opinion?"

The correspondence between your Department and counsel for the Reconstruction Finance Corporation in regard to this question has been inspected and carefully read. We note that R.F.C. through its counsel vigorously asserts its right to these unclaimed deposits in the sum above stated, on the grounds that the depositors who may be entitled to their respective interests in said sum of money still fail to claim their deposits, and that the R.F.C. is entitled to the whole thereof, as a known creditor and claimant, as against all of the remaining depositors or creditors whose separate respective deposits are represented by said fund. Counsel for the R.F.C. cite as an authority sustaining its position, the case of Reconstruction Finance Corporation vs. Brady, State Banking Commissioner, et al. (Texas), 150 S.W. (2d) 357. Counsel for the R.F.C. in the third paragraph of their letter to your Department dated April 22, 1948, make the following statement:

"It is our belief that this corporation is exactly in the same position that the Reconstruction Finance Corporation was in the Texas case, and that the same law applies to our situation as applied there."

The Texas case cited here has been read and considered. We believe it is not applicable here on account of our Sections, 7897 and 7898, R.S. Mo. 1939.

Section 7897, R.S. Mo. 1939, provides for the creation and maintenance of a trusteeship for sums remaining due to and unclaimed by a creditor, a depositor, or other persons named, upon the liquidation of a bank. But our sections do not stop with that. The next succeeding section of our statutes, Section 7898, in the second proviso thereof,

states the following:

"\* \* \* and provided further, that after said sum or sums of money belonging to any unlocated depositor, creditor, stockholder or shareholder has remained with the Commissioner for a period of more than six years, said sum or sums of money shall be paid into the escheat fund of the State of Missouri: \* \* \*".

The question considered here is not an equitable matter. It is governed exclusively by Section 7898, R.S. Mo. 1939, as a matter of law. The escheat provision contained in the second proviso of said Section 7898, is mandatory upon your Department, with the provision: "\* \* \* that after said sum or sums of money belonging to any unlocated depositor, creditor, stockholder or shareholder has remained with the Commissioner for a period of more than six years, said sum or sums of money shall be paid into the escheat fund of the State of Missouri."

This provision, then, being mandatory, rather than directory, demands a strict construction of its terms to compel compliance with, and the administration of, the statute as written. 59 C.J., page 984, Section 582, on this question, states the following rule, respecting the construction of such a statute, to-wit:

"\* \* \* and where it 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. \* \* \*".

This rule has been recognized and is upheld by our Supreme Court in numerous cases, one of which is the case of State ex rel. vs. Holtcamp, 322 Mo. 258, where our Supreme Court, l.c. 268, said:

"'Whenever a statute limits a thing to be done in a particular form, it necessarily includes in itself a negative, namely, that the thing shall not be done otherwise.' \* \* \*".

Our Banking Code directs the liquidation of insolvent banks or trust companies without giving any preference whatever to any depositor or creditor in the distribution of unclaimed deposits on hand at the final liquidation of such institution. All are treated alike by the statute, and anyone of the aggregate number of depositors or creditors is entitled at any time, and at all times, fixed by statute, to apply for and receive his or her respective unclaimed deposits.

The Reconstruction Finance Corporation, in the matter here being considered, has been neither defrauded nor prejudiced. It stands exactly, by the terms of said Section 7898, upon the same ground of any other creditor. It has no priority or preference under the statute over any other creditor or depositor, and surely it cannot be said that the courts may confiscate the deposits due other creditors and depositors, and hand them over to one claimant.

CONCLUSION.

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

1) Considering the above authorities, the Reconstruction Finance Corporation, as a creditor, is not entitled to claim or receive the sum mentioned in your letter representing unclaimed deposits now held in the custody of your Department, and derived from the liquidation of the Bartlett Trust Company, to the exclusion of other creditors, or the owners of unclaimed deposits included in said sum.

2) It is the further opinion of this Department that, under the terms of Section 7898, R.S. Mo. 1939, it is mandatory that you pay, at the time provided by law, such funds to the State Treasurer of the State of Missouri, to be deposited and held in the Escheat Fund of the State of Missouri, until otherwise disposed of according to law.

Respectfully submitted,

APPROVED:

J. E. TAYLOR  
Attorney General

GWC:ir

GEORGE W. CROWLEY  
Assistant Attorney General