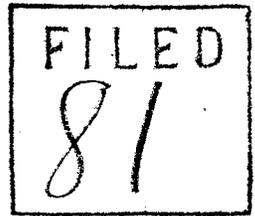


30
BANKS: A bank is required by law to pay on demand a depositor's balance due without delay or notice of intention to close an account.

August 13, 1947

8/15



Honorable H. S. Shaffner
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Shaffner:

This will acknowledge the receipt of your recent request for an opinion from this Department in which your letter states the following:

"It has been called to my attention that a bank chartered by this Department has placed in its lobby the following notice to the public:

"CLOSING CHECKING ACCOUNTS

Checking accounts may be closed only after forty eight hours notice, and in such manner as the Bank may prescribe.

October 8, 1945."

"Are there any provisions in the State Banking Law which will permit a delay in paying a depositor the balance due on a checking account? Can a bank make special regulations at the time the account is opened or otherwise delay the payment?"

The relationship of a bank and its depositors unless special contractual relations are otherwise entered into between the bank and the depositor of money, is one of debtor and creditor. Corpus Juris Secundum, Volume 9, l.c. 546, under the title of "Banks and Banking states the following text:

"The primary duty of a bank is to its depositors, and it has been said that

the contract between a bank and a depositor is not materially different from any other contract by which one person becomes bound to take charge of and repay another's funds. The relation between a bank and a depositor may be dual in character, the bank being the depositor's debtor with respect to one thing and his agent with respect to another, or his debtor at one time and his agent at another; and while the relation between the bank and a depositor with respect to a general deposit is generally regarded as that of debtor and creditor, yet in another sense the depositor is the owner of the deposit, in that he can demand repayment at any time."

The duty of a bank to pay a depositor's check upon presentation was one of several questions submitted to our Springfield Court of Appeals in the case of Waggoner vs. Bank, 220 Mo. App. 165. The Court, l.c. 168, ruled as follows:

"* * * It is a well-settled general rule that it is the duty of a bank to pay on demand all checks drawn by depositors on their checking account to the amount of their respective deposits. * * *".

Careful reading of the Banking Code of Missouri fails to disclose any statute or part of a statute which would authorize banks to refuse payment of a depositor's money in such bank upon the presentation of a check withdrawing either a part or all of such fund, much less that the bank could enforce such an arbitrary rule of requiring the depositor to give a notice of forty-eight hours or any other period of time as notice of the intended withdrawal of the depositor's funds from the bank. As we read and construe the statutes in the Banking Code, a depositor has the right to demand, upon the presentation of a check therefor, the payment of his deposit closing his account with the bank immediately upon his presentation of such check.

Of course it will not be contended, we are sure, that depositors may not contract with a bank providing

for any terms respecting the withdrawal of funds that the bank and the depositor might agree upon. But without the previous consent of the depositor a bank may not make special regulations on the one part, delaying the payment of a depositor's check when the check is presented, withdrawing the whole of the depositor's funds and closing his account with the bank.

CONCLUSION.

It is, therefore, the opinion of this Department that unless an agreement to the contrary is made between a depositor of funds in a bank and the bank interested, no bank is authorized to post in its banking house or enforce such a notice as:

"CLOSING CHECKING ACCOUNTS

Checking accounts may be closed only after forty-eight hours notice, and in such manner as the Bank may prescribe."

and that a bank is obligated under the law to pay a depositor his balance due on a checking account without delay when a check is presented therefor.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

GWC:ir