

TRUST COMPANIES: A trust company, under the laws of this State, may not acquire or own all of the capital stock, or a controlling interest, in another trust company in this State.

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June 7, 1948

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

Dear Commissioner Shaffner:

This will acknowledge your letter requesting the opinion of this Department whether one trust company in Missouri may acquire and own all of the capital stock, or a controlling interest, in another trust company in this State.

The statute of this State in question, and the construction of which is requested in your letter is Section 9 of Senate Bill No. 245, now found in Laws of Missouri, 1945, page 924. Said Section 9 of said Senate Bill No. 245, is found on pages 929 and 930, Laws of Missouri, 1945. Said Senate Bill No. 245 is an Act repealing Section 8032, Laws of Missouri, 1943, pages 988 to 994, inclusive, relating to trust companies, and the re-enactment of a new section in lieu thereof, to be known and numbered as Section 8032. Among other acts prohibited to trust companies in said Senate Bill No. 245, are the following, as set forth in said Section 9. Said Section 9 is as follows:

"Shall not invest or keep invested in the stock of any private corporation an amount in excess of fifteen per centum of the capital and surplus fund of such trust company; nor shall it purchase or continue to hold stock of another bank or trust company if by such purchase or continued investment the total stock of such other bank or trust company owned and held by it as collateral will exceed fifteen per centum of the stock of such other bank or

trust company: Provided, however, that this limitation shall not apply to the ownership of the capital stock of a safe deposit company, the vaults of which are connected with or adjacent to an office of such trust company, nor to the ownership by such trust company or its stockholders of a part or all of the capital stock of one bank organized under the laws of the United States or of this state, nor to the ownership of a part or all of the capital of one corporation, organized under the laws of this state, for the principal purpose of receiving savings deposits or issuing debentures or loaning money on real estate or dealing in or guaranteeing the payment of real estate securities, or investing in other securities in which trust companies may invest under this chapter, nor to the continued ownership of stocks lawfully acquired prior to the first day of January, A.D. 1915."

We believe that before any trust company chartered to carry on a banking business, may purchase and hold the stock of another trust company doing a banking business or purchase the stock of a bank, it must have statutory authority so to do, including the percentage or the amount of such stock in another corporation which it may acquire. 7 C.J. 888 on the power and authority of a trust company to purchase stock in another corporation, states the following text:

"A loan, trust, or investment company has been held to be without lawful power to purchase its own stock or to purchase a controlling interest in the stock of another bank for the purpose of operating and managing such bank. \* \* \*".

Footnote 7, to the above quoted text from Corpus Juris, cites the case of State vs. Bankers' Trust Company, 157 Mo. App. 557, 138 S.W. 669. That was a case decided by the Kansas City Court of Appeals, construing a statute

relating to trust companies prior to the time trust companies were given authority to carry on a commercial banking business. However, the principles discussed and announced by the Court are applicable to present statutes and present general conditions in like manner as they were then applied to the case there under discussion. The Court in stating what the powers of trust companies are, l.c. 564, in said case, said:

"\* \* \* 'the enumeration of the powers conferred upon trust companies by the statute must be held to exclude all others.' \* \* \*".

Section 9 of said Senate Bill No. 245, hereinabove quoted, in the proviso thereof, is explicit and definite in providing that the limitations of said Section shall not apply "\* \* \* to the ownership by such trust company or its stockholders of a part or all of the capital stock of one bank organized under the laws of the United States or of this state \* \* \*". The proviso does not include the stock of "trust companies" as being subject of purchase in excess of the 15% thereof, permitted to be purchased as named in the first part of said Section 9. The proviso confines the privilege of purchasing all of the stock of a corporation by a trust company to that of "banks". It is then reasonable, we think, to conclude that the Legislature confined the power of a trust company in purchasing the whole of the stock of another corporation to one bank and thereby by implication withheld the power of a trust company to purchase the whole of the stock of another trust company to prevent the creation of a monopoly.

Turning again to the Bankers' Trust Company case, supra, on the question of it being the public policy of this State to prohibit one trust company from purchasing and owning the whole of the stock of another trust company to prevent monopolistic practices, the Court, l.c. 569, 570, further said:

"The purchase of the stock of the Kansas bank by the Bankers Trust Company for the purpose of controlling the management of the bank was void for the reason that not

only was it in excess of the corporate powers of the Trust Company but was violative of the sound rule of public policy which forbids the creation of monopolies through the ownership by one corporation of controlling interests in the stock of others."

The terms of the proviso of said Section 9 of Senate Bill No. 245, Laws of Missouri, 1945, l.c. 929, providing that a trust company may only purchase the total stock of one bank, and failing to include the right to purchase the stock of a trust company, is plain and certain, so that we believe no room exists for construction of said proviso. It mentions one bank but does not mention a trust company. Our Supreme Court on the question that a plain, unambiguous statute needs no construction, in the case of State ex rel. Thompson, 319 Mo. 492, l.c. 496, said:

"\* \* \* Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.' \* \* \*".

Should there be need, however, of the citation of authority to aid in the construction of said proviso, we believe that the rule as stated by 59 C.J. 984, Section 582, is applicable here, where it states the following:

"\* \* \* where a statute enumerates the things upon which it is to operate, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned; \* \* \*".

See: State ex Inf. Conkling ex rel. Hendricks vs. Sweaney, 195 S.W. 714, 270 Mo. 685.

#### CONCLUSION.

It is, therefore, the opinion of this Department that, under the terms of Section 9 of Senate Bill No. 245, Laws of Missouri, 1945, l.c. 929, 930, a trust company organized under the Laws of Missouri, may not acquire or own

Honorable H. G. Shaffner -5-

all of the capital stock, or a controlling interest, in another trust company in Missouri.

Respectfully submitted,

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