

FINANCE: Provisions of Section 7973, R. S. Mo. 1939, to be
CORPORATIONS: complied with by banking corporations before
Commissioner of Finance issues certificate of
compliance thereunder.

February 1, 1950

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



Dear Sir:

The following opinion is rendered in reply to your recent request reading as follows:

"It comes to my attention that a state chartered bank has increased their common capital by the declaration of a common stock dividend.

"None of the provisions as provided in Section 7973, Banking Laws, Missouri, 1939, has been met. The bank did cause to be published a notice of annual meeting as required in Section 5001, General Corporation Laws affecting banks, as released in Banking Laws, State of Missouri, 1939.

"Under their procedure, can they qualify, and may this office acknowledge qualification by issuance of a certificate?"

In the above quoted letter you have disclosed that a state chartered bank in Missouri has attempted to increase its capital stock by declaring a stock dividend without following the procedure outlined in Section 7973, R. S. Mo. 1939, which section is applicable when any such corporation desires to increase its capital stock. Section 7973 of Article 2, Chapter 39, R. S. Mo. 1939, sets forth the procedure to be followed by banks operating in this state when they desire to increase their capital stock. For the purpose of this opinion, we assume that the shares of stock to be issued by the Washington County Commercial Bank partake of a character which would result in a increase of capital stock in an amount over and above that provided for in its articles of incorporation. This being so, the banking corporation must find its authority for such increase, as well as the procedure to be followed in making such an increase, in the language contained in Section 7973, R. S. Mo. 1939.

Hon. H. G. Shaffner

In your opinion request it is stated that "none of the provisions as provided in Section 7973 * * * has been met." At the very outset we are confronted with two general rules which are stated as follows, 7 Am. Jur., Banks, Section 39:

" * * * A banking corporation organized under a state statute may likewise increase its capital stock, but the mode provided by the statute must be strictly followed. Accordingly, where the charter of a state bank does not provide for an increase of its capital and there has been no amendment thereto authorizing an increase, any attempt on the part of the corporation to increase the stock in excess of the authorized capital is ultra vires and stock issued by reason of such attempted increase is void. * * * "

Section 7973, R. S. Mo. 1939, clearly outlines the duties of the Commissioner of the Division of Finance relative to the actions of a state banking corporation seeking to increase its capital stock. The statute is not ambiguous and the Commissioner is not authorized thereunder to issue a certificate of compliance to the banking corporation unless and until there has been filed in his office a signed and verified statement made by the officers of such banking corporation disclosing that all requirements of the statute have been met. It is apparent from the facts set forth in the request for an opinion that the provisions of the statute have not been followed.

CONCLUSION

It is the opinion of this department that the Commissioner of the Division of Finance of the State of Missouri is not authorized to issue a certificate of compliance to a state chartered bank, required by Section 7973, R. S. Mo. 1939, unless and until such banking corporation can certify that all of the applicable provisions of the aforesaid statute have been met.

Respectfully submitted,

APPROVED:

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