The Missouri Division of Finance – the First 100 Years

On January 9, 2009, the Missouri Division of Finance completed its first century as an independent regulatory agency.

There was banking in Missouri before 1909, of course. In fact, there was banking in Missouri before it was part of the United States. The earliest European settlers had business arrangements which amounted to banking.

After Missouri became American soil as part of the Louisiana Purchase, the Territorial Assembly authorized two state-chartered banks by – as was the requirement of the day – passage of detailed legislation creating the corporations: The Bank of Saint Louis (1813) and The Bank of Missouri (1816) came into being upon passage of bills by both houses which were then signed by the governor. The names of the first directors appear in the law as does the name (and amount paid in) of each subscriber.

These early banks had enumerated powers and corresponding penalties for noncompliance but there were no examinations and there was nothing resembling regulation.

And things remained so for decades: incorporation was an extremely cumbersome process and, while enumerated powers with prescribed penalties existed, there were no examinations, no regulation and no enforcement. It was in 1856 that Missouri finally got a law which greatly streamlined chartering a bank. Included among this statute's provisions were examinations of a sort: any committee of the General Assembly was authorized to visit and examine any Missouri state-chartered bank at the committee's pleasure (In fact, the public was authorized to examine a bank; no evidence suggests that private citizens did conduct any such examinations.)

The same act created the position of "Bank Commissioner", an official authorized to examine the banks, to verify the quarterly reports, to keep possession of the plates banks used to print their currency, and to hand-sign each piece of currency issued by the banks. The first such bank commissioner was Claiborne Fox Jackson who is far better remembered as the Civil War-era Governor who tried to lead Missouri out of the Union. This Bank Commissioner has no continuity with the present-day Commissioner of Finance. The position was short-lived, being abolished in 1866 when Missouri ceased issuing bank charters.

Missouri resumed chartering banks in 1877 albeit under a statute that did not require vetting insiders, re: character and fitness, etc., nor did it provide for examinations. The banks were, however, obliged to publish an early version of the call report and to file proof of such publication with the Secretary of State.

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In 1895, Missouri's General Assembly, responding to the economic aftershocks caused by the Panic of 1893; enacted a "bank inspections" law under which the Secretary of State or ". . . one or more competent persons . . . appointed by him . . ." was required to visit and examine each bank each year. The expenses of examination were to be recovered by assessing each bank according to its capital: capital of $10,000 or less meant a $10 assessment and so on to the top bracket (capital exceeding $250,000) which could be assessed up to $50.

The Secretary of State was to seek out capital impairment or shortages as well as unsafe or unsound banking practices. Capital shortages were to be made up and unsafe, unsound practices were to cease at the Secretary's order. This failing, the Attorney General was empowered to bring an action to remove directors or, if warranted, to seek a receiver to wind up the affairs of the bank.

The 1895 legislation authorized 2 examiners at annual salaries of $2,000 plus expenses. The examiners took a very modern-sounding oath of office which required them *inter alia* to support the constitution, to demean themselves faithfully, to make fair and impartial examinations, to accept no gifts, and to maintain strict confidentiality re: the condition of banks. Violation of the oath constituted a felony.

The first-ever *Report on Bank Examination and the Banking Laws of Missouri*, (known, both then and now, as "*the biennial*") was dated January 28, 1897 and appeared over the signature of Secretary of State A. A. LeSueur. The biennial noted that within ten days of the law becoming effective, the examiners had been appointed, necessary "blanks" had been created, based on reviews of all existing state and federal forms and examinations had commenced on Missouri's 590+ state banks. In the 18 months from startup to year-end 1896, the Secretary's 2 examiners completed an astounding 725 examinations. Presumably due to the examination process, 28 banks were "permanently closed", 4 were closed but were subsequently permitted to reopen, 20 "for various reasons" went into voluntary liquidation and 9 more "made arrangements".

The biennial included a consolidated balance sheet of Missouri's state-chartered banks. "Resources" totaled $105,947,612.27 and included such categories as "Loans and discounts undoubtedly good on personal or collateral security", "Loans and discounts undoubtedly good on real estate collateral", and currency totaling $7 million. Also listed was "Gold coin" amounting to $3,270,501.43, and $577,380.26 in "Silver coin". No explanation is offered for the odd cents included in silver and gold.

LeSueur, who in a later biennial claimed authorship of the original Bank Inspections Law, acknowledged that the law was not perfect.

First, LeSueur believed it "manifest" that two examiners could not do justice to examining Missouri's 600 banks. This despite his praise of the examiners which approaches hagiography: "They have been industrious beyond their physical strength, and have labored day and night." LeSueur felt this workload justified 2 more examiners,

Second, he recommended that the fee schedule be upped to just enough to cover the entire cost of examinations.

Third, LeSueur lamented the awkward method of taking possession of a failed bank: the Attorney General was obliged to sue to have a receiver appointed. While the matter was in litigation, insiders and "favored creditors" might protect themselves to the detriment of others.

An 1897 enactment addressed all of these matters: the examination force was doubled to 4, examination assessments were raised, and the Secretary of State was authorized to take immediate possession of a failing financial institution.

The 1899 biennial reports that 1,232 examinations were conducted in the two years commencing February 1, 1897. The Secretary notes that, with his new authority, he had put 4 examiners in the field but, once caught up, he dropped the number to 3.

In the 1901 biennial, LeSueur took credit for drafting the 1895 banking law which, as amended in 1897, LeSueur stated ". . . works like a charm".

The 1903 biennial bears the signature of a different Secretary of State, Sam B. Cook, who posited that the just ended biennium had been among the most profitable ever for Missouri bankers. Secretary Cook was not embarrassed by 2 bank closings during the biennium since, between the effective date of the bank inspections law, July 1 and year-end 1895, 16 banks had closed and that in the years 1896 through 1902 closings had numbered 9, 9, 5, 3, 1, 1, and 1, respectively. "No stronger argument could be used in favor of bank examinations by the State . . ." he said.

Secretary Cook had nothing but praise for the bankers of Missouri. He noted that these bankers paid the lowest surety bond rates in the country, ". . . certainly a high and deserved compliment to the integrity of the Missouri banker."

The 1903 General Assembly changed the assessment brackets to assure that all paid their fair share and that the Department was completely self-funding.

The 1905 consolidated report of condition included an oddity: the currency is reported down to odd cents just as gold coin had been reported in patently impossible numbers. Was Civil War-era fractional currency still circulating and, accordingly, reported?

The name of yet another Secretary of State, John E. Swanger, appeared on the cover of the 1907 biennial. Secretary Swanger observed ". . . in the future, Banks may become a universal convenience, and wherever there is a community which will in any measure support one, capital seems to be ready to invest in the business." In calling for 2 more examiners, the Secretary emphasized that they would more than pay for themselves in additional assessments. In fact, the General Assembly did authorize a total of 8 examiners.

Swanger commented that the question of establishing a separate banking department outside the Secretary of State's office ". . . will doubtless . . . be presented for consideration." He declined to provide details but urged that the issue be addressed with great care as banking is pivotal to all other business.

Indeed, the 1907 General Assembly did enact a law which removed bank regulation from the Secretary of State's office and vested it in a new, stand-alone Banking Department, effective in 1909. That law provided for a Bank Commissioner to be appointed by the Governor, a Deputy, a clerk, a stenographer, and no more than 8 examiners. The Commissioner's salary was set at $3,500 per annum and the deputy's at $1,800.

Secretary Swanger had lingering concerns: he felt that every act of a bank from chartering to winding up should be under the regulatory authority of the banking department. Absent such a law, a bank could merge, consolidate or even liquidate without so much as notifying the regulator. Second, Swanger believed that the commissioner should be empowered to address problems in banks which were struggling but which had not yet failed.

Third, Swanger anticipated a financial shortfall when the salaries of new positions and separate office expenses arrived as the Banking Department was being broken away from the Secretary of State's office. Until 1921, the regulation of Missouri state-chartered banks was the responsibility of the State Banking Department, the chief officer of which held the title of Bank Commissioner. In 1921, the agency was renamed the State Department of Finance with a chief official known as the Commissioner of Finance.

In 1909, although the Department of Banking was newly independent, it had an experienced executive, as John E. Swanger quit as the Secretary of State to become the first Bank Commissioner. Swanger was gratified by developments: "The wisdom of the separation of this important department from the office of Secretary of State has been fully proven by the unequaled record made by the banks in Missouri during the past 2 years . . ."

Swanger anticipated a budget shortfall due to the additional costs of four new employees plus stand-alone rent and other office expenses. In fact, the funds were exhausted partway through the biennium. Swanger accepted a loan on behalf of the department rather than shut down the agency. He assumed correctly that the General Assembly would cover the shortfall.

The Department of Finance became independent around the time of great economic turmoil, the Panic of 1907, and was quickly involved in the efforts to create what was to become the Federal Reserve.

In the 1913, Commissioner Swanger acknowledged that there had been some bank failures in the recent past but was quick to point out that no depositor lost any money. He was effusive with praise for his 8 examiners, who managed 2,449 examinations in two years (Swanger preferred 3 examinations every 2 years rather than once a year.) and did so under budget. During the 1911-1912 biennium, Swanger noted the number of Missouri state-chartered banks had gone from 1,157 to 1,270 and total resources from $395 million to $449 million. This, according to the Commissioner, ". . . gives indubitable proof that Missouri's banking interests are keeping pace with the growth and development of the State." All is clearly well, opined Swanger. ". . . the past two years . . . (were) . . the most prosperous in the history of the State."

Swanger, as was his wont, made legislative suggestions. He believed that the Commissioner should be given more authority over the organization and chartering of new banks which should include inquiries into character and fitness of organizers. He also believed that the Commissioner should be allowed to decide whether the convenience and needs of a community warranted a new bank and that he should retain control over banks until the liquidation process was completed. He felt that the Commissioner should have the authority, in proper circumstances, to make demands of banks and to enforce those demands, the forerunner of the modern cease and desist order. These proposals all became law as did the two following recommendations.

Once the Federal Reserve System had been established, the Department's leadership urged passage of a law permitting Missouri banks to join. Commissioner J. T. Mitchell approached the end of the second decade of the 20th century with confidence and giving assurances that ". . . the banks . . . in Missouri are, uniformly, in a safe and prosperous condition and are being conducted on safe and sound banking principles, which assures their continued success."

Commissioner Mitchell had little patience with professional "bank promoters", however. "The payment of commissions, for securing subscription to bank stock, or organizing a bank, should be prohibited, so as to shut out the promoter who organizes weak banks where not needed, puts them in weak hands (sometimes for a commission or price), then goes to another community and repeats the operation."

For decades, starting in 1895, there was within the Secretary of State's Office, a Bureau of Building and Loans which monitored saving and loan (nee: building and loan) associations. At one time, these associations numbered into the hundreds albeit they were mostly very small, very specialized and very localized. In 1972, the agency was made into the stand-alone Division of Savings and Loan Supervision. As these S&Ls did little other than make first deed of trust residential real estate loans with savings deposits they had accumulated, there always existed the difficulties associated with borrowing short term and lending long term. This problem finally became manifest in the 1980s. The mismatch of assets and liabilities pushed most Missouri state-chartered S&Ls to insolvency due to operating losses. A flurry of mergers, consolidations and conversions essentially left the Division of Savings and Loan Supervision without an industry to regulate. As maintaining a free-standing agency to regulate fewer than ten associations could not be justified, the residual responsibility was given to the Division of Finance in 1994 and the Division of Savings and Loan Supervision went out of existence.

The Department was given responsibility for regulating consumer credit lending (aka "small loans") in 1927 per SB 326, which authorized an exception to the general usury rate of 8%: lenders who paid a $500 annual licensing fee were permitted to make loans of up to $300 at rates not to exceed 3.5% per month, i.e. 42% APR. Safeguards against lending more than $300 at the premium rate were established. Extra fees were prohibited as were other perceived potential abuses. Annual examinations to ensure against abuses were mandated although no records exist indicating that such examinations were ever performed.

The 1927 act was declared unconstitutional in 1947. (HFC v Schaffner 203 SW2d 734 (1947)) It was not until 1951 that a small loan act reappeared in the statutes. This enactment called for a much reduced annual license fee ($150/annum), a

maximum loan of $400 and an unusual maximum rate of 2.218% per month. It also made the premium rate available to any lender but otherwise was very much like the earlier act.

The "small loan act" has been amended repeatedly over the years. Many of those changes were rate increases or restructurings until the interest rate was finally deregulated in 1998. In addition to the rates becoming "as the parties agree," i.e. deregulated, there would eventually be no limit to the size of the loan; i.e., the result is a "small loan" being potentially a huge loan.

Over the years, different types of credit have been added to the original "small loan" approach. In 1961 and 1963, respectively, the Retail Credit Sales Act and the Motor Vehicle Time Sales Act became law. A premium finance law, a second deed of trust act, title loans, the so-called "payday loan law" and a consumer installment loan law have become responsibilities of the division. As the division's 100th anniversary approached, examinations of consumer credit outlets numbered in the thousands annually.

Since 1984, the Division has licensed every money order company operating in the state. The Division was also given duties concerning mortgage brokers and credit repair companies.

Also in 1927, the General Assembly passed legislation which gave the Secretary of State responsibility for chartering and regulating credit unions. Decades later, in 1972, this responsibility was transferred to the Division of Finance only to be transferred away again a mere two years later, this time to a stand-alone Division of Credit Unions.

The number of Missouri state-chartered banks has grown and retreated during the division's first 100 years. The World War I boom, both before and after America's entry into the conflict, saw many new banks chartered. When the post-War recession in agriculture settled in, many of the new banks failed. It should be noted that a great number of these "closings" were in name only as many of the charters had never been active. In a number of cases, the statutory minimum capital was pledged and a charter obtained but business never commenced. As the chart below shows, from 1914 to 1920, the war boom saw the number of charters rise steadily and quickly up to 1920 then take exactly the reverse path, ironically during the boom years known as the roaring twenties.

The Department's title was reduced to Division of Finance as part of the reorganization associated with the new Constitution of 1945. The Division of Finance became part of the Department of Business and Administration. The Reorganization Act of 1974 resulted in a transfer to the Department of Consumer

Affairs, Regulation and Licensing which was later renamed the Department of Economic Development. In 2006, the Division was transferred to the Department of Insurance, Financial Institutions and Professional Registration.

There can be no denying that the Great Depression took its toll. To use the words of Commissioner S. L. Cantley, "Economic conditions, broadly speaking, have been most unfavorable during the year 1930, and their disastrous effects must, of necessity, find lodgment in and be reflected through local financial institutions. Commercial banks must ultimately absorb the aggregate of the losses and failures of their customers to a large extent and, in many cases, the results have been closed banks." As the chart below shows, at about the time of the stock market crash, which heralded the arrival of the Great Depression, the number of Missouri state-chartered banks steadily shrunk from 1,147 at year-end 1929 to less than half that number in 1939, generally regarded as the last of the Depression years. Gone were the positive outlook and optimism of earlier times. Commissioner O. H. Moberly opined "It will be recalled that, because of the unprecedented general business conditions in the earlier period of this Administration, lack of confidence in banking institutions became so pronounced that a banking moratorium was declared and, by Proclamation of the President of the United States, all banking institutions were closed. A general order was then issued to all banking supervisors to permit only sound banks to reopen for the transaction of business in a normal manner. As a consequence, following the banking holiday, 186 banks. . . in this state . . . have been disposed of . . . ."

Branch banking is another issue that caused, and continues to cause, a decline in the number of Missouri state-chartered banks. Missouri was, for decades, a unitary banking state, i.e., branching was forbidden. An obscure reference to branching found in the 1895 "bank inspections law" prohibited branching. For many years, this was not much of an issue, given the level of technology which did not permit much communication between distant sites. Starting in the late 1950s, however, there came a call for breaking out of the confines of "brick-and-mortar-and-only-within-the-limits-of-a-bank's-city-and-county". A referendum on the issue at that time saw the voters say "no" to branch banking. The next year, the General Assembly authorized "facilities" but only if within the bank's city and county, within 400 feet of and in sight of the main bank; the services available at such a facility were limited to cashing checks and making change. The opponents of branching resisted every encroachment, furiously at first and then doggedly. Stand-alone night deposit boxes a few feet from a main bank were challenged as branches. The development of the ATM resulted in a battle over whether they were branches albeit not manned and available to all.

Things gradually loosened as the decades passed. First one facility became available to a given bank and then two. The maximum distance a facility could be

from the main bank gradually lengthened and, eventually, the confines of the city and county were relaxed.

Oddities developed. While the opponents of branching resisted any general authority to branch, a banker seeking a single branch location that did not impact any other existing bank might get approval from the General Assembly. Example: Banks were forbidden to branch outside their city and county: "unless such city, town, village, or unincorporated community is located in a county or counties which border on any lake or reservoir having at least a one-thousand-mile shoreline and, provided further that any such facility located in an adjacent county must be located within the corporate limits of said city, town, or village and within five miles of the main banking house;" (Translation: The Bank of Versailles may establish a branch in Laurie")

In 1955, the State Banking Board, a bipartisan body made up of 5 members who are appointed by the Governor with the concurrence of the Senate, was created within the Division: The purpose of the Board at the outset was to advise the Commissioner concerning the operations of the Division, to hear and decide appeals of the Commissioner's denial of a charter, to recommend legislation to the General Assembly and to approve or disapprove regulations proposed by the Commissioner. The Board was subsequently authorized to consider appeals concerning the Commissioner's actions concerning branches. In the late 1970s and early 1980s, the 5-member Board met regularly to decide the dozens of challenges to the approval or denial of branch applications. Once Missouri had become, in effect, a statewide branching state, many former issues (e.g. whether a proposed site was within the limits of a particular unincorporated community or how to determine whether a community was within the distance limits of the law) no longer existed and the role of the Board was diminished.

During this time, holding companies got what might be regarded as "de facto" branches by chartering a new bank wherever and whenever a new location needed service. The chart shows the upward creep in the number of charters during this period. When the remaining barriers to branching finally fell and Missouri became a state-wide branching state, many of those charters were surrendered and what had been banks became branches, all in the interest of efficiency. This converting of banks with charters into branches with mere certificates of authority in no way reduced the availability of banking services to the public. Although no longer technically a bank, the branch offered a full line of banking services. The Missouri state-chartered banks, at the time of the Division's 100th anniversary were operating at 1,292 locations.

The Division of Finance came into being when the General Assembly reacted to the economic aftershocks of a great panic. Thereafter, the Division has dealt with

the impact of two world wars, the greatest economic depression in history plus other, lesser issues and the growing pains which are inevitable with an industry that is always developing. As it starts into its second century, the Division is confronted by disaster in the real estate market, a meltdown in the stock market and a credit crisis. The Division was equal to all of the challenges of its first ten decades and expects to be equal to what is to come.

Year	Number
1900	607
1901	625
1902	673
1903	727
1904	795
1905	893
1906	990
1907	1,016
1908	1,045
1909	1,101
1910	1,144
1911	1,193
1912	1,260
1913	1,308
1914	1,352
1915	1,374
1916	1,382
1917	1,398
1918	1,408
1919	1,484
1920	1,535
1921	1,523
1922	1,498
1923	1,506
1924	1,463
1925	1,416
1926	1,345
1927	1,280
1928	1,222
1929	1,147
1930	1,024
1931	873
1932	795
1933	709
1934	659
1935	626
1936	594
1937	573
1938	557
1939	547
1940	540
1941	533
1942	523
1943	514
1944	514
1945	512
1946	515
1947	520
1948	521
1949	519
1950	522
1951	521
1952	522
1953	524
1954	525
1955	530
1956	535
1957	534
1958	545
1959	554
1960	551
1961	549
1962	550
1963	553
1964	558
1965	565
1966	568
1967	569
1968	571
1969	573
1970	578
1971	579
1972	589
1973	594
1974	600
1975	602
1976	605
1977	609
1978	625
1979	633
1980	637
1981	623
1982	620
1983	612
1984	596
1985	555
1986	515
1987	502
1988	491
1989	466
1990	462
1991	455
1992	438
1993	424
1994	421
1995	410
1996	387
1997	368
1998	345
1999	327
2000	326
2001	316
2002	313
2003	310
2004	309
2005	308
2006	307
2007	300
2008	291