

Governor Michael L. Parson  
State of Missouri

Mick Campbell  
Commissioner of Finance



DIVISION OF FINANCE

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July 26, 2024

[REDACTED]

Dear [REDACTED]:

Pursuant to §362.106(4) RSMo., you have requested a determination from the Missouri Division of Finance (the "Division") that a Missouri state-chartered bank or trust company is permitted to obtain a waiver from the Division regarding in-state residency requirements for directors on the same basis and subject to the same standards and requirements as applicable to national banks in obtaining a waiver from the Office of the Comptroller of the Currency (the "OCC") under analogous residency requirements for national banks.

**Applicable Missouri and Federal Laws and Regulations**

Under current Missouri law, §362.245.2 RSMo., applicable to each state-chartered bank or trust company, states "at least a majority of the directors must be residents of this state at the time of their election and during their continuance in office." This section also provides that certain directors are considered Missouri residents for purposes of the statute if they reside within 100 miles of the "banking house" of the bank or trust company. Under §362.245.3 RSMo., "[if] at a time when not more than a majority of the directors are residents of this state, any director shall cease to be a resident of this state or adjoining state as defined in [§362.245.2], he or she shall forthwith cease to be a director of the bank or trust company and his or her office shall be vacant."

National banks have similar board residency requirements under which a majority of directors must be residents of the "State, Territory or District in which the association is located" or fit within the 100-mile exemption similar to the Missouri statute. See 12 U.S.C. §72.

As you represent in your request, unlike a Missouri state-chartered bank or trust company, a national bank is permitted to obtain a waiver from its regulator to waive the residency requirements pursuant to 12 C.F.R. §5.43(c)(1) which provides:

Residency. A national bank may request a waiver of the residency requirement for any number of directors by filing a written application with the OCC. The OCC may grant a waiver on an individual basis or for any number of director positions. The waiver is valid until the OCC revokes it in accordance with paragraph (d) of this section, or, if granted on an individual basis, until the individual no longer serves on the board.

It is the Division's understanding that one of the bank's current board members, who is a Missouri resident, intends to move to another state and desires to remain on the bank's board. You have also stated that upon this board member's move to another state, a majority of the directors will no longer be Missouri residents as required by § 362.245.2 RSMo. Furthermore, the bank does not want to lose the valuable experience and expertise of this board member.

After considering the bank's circumstance and the relevant federal statutes and rules, such a regulatory waiver could be useful for any number of scenarios including when the composition of the board changes because of resignations, an increase in the number of directors, or the relocation or replacement of one or more directors, any of which can cause a majority of the resulting board to not meet the residency requirements. See the *Comptroller's Licensing Manual: National Bank Director Waivers* at page 2 (December 2021).

You also proffer that while a Missouri bank or trust company may no longer be able to retain a director who moves out-of-state (or it may be forced to otherwise re-structure its board), a national bank can simply request a waiver from its regulator of the analogous residency requirement. Similarly, a Missouri state-chartered bank or trust company may be limited by §362.245 RSMo. from attracting qualified and desired candidates for its board, based only on residency, whereas a national bank could request a waiver from its regulator so that it may retain the same qualified and desired prospective board members, who, again, reside out of state.

### **Findings**

After reviewing the applicable Missouri and federal laws and regulations, and your request, I have determined that:

- National banks are expressly authorized by federal law to conduct the proposed activity (i.e., obtain regulatory waivers from bank board residency requirements), subject to the approval and procedural requirements set forth in 12 C.F.R. §5.43;

- The proposed activity is not an unsafe or unsound practice, provided that the bank or trust company meets the prescribed standards and limitations for the activity; and
- The inability of state-chartered banks and trust companies to obtain waivers from the Division for such board residency requirements puts those banks and trust companies at a disadvantage when compared to national banks and imposes unnecessary limitations on their ability to attract and retain the highest quality directors, provided that these disadvantages and limitations are particularly problematic for Missouri state-chartered institutions with a nationwide customer base and/or nationwide operations.

Therefore, your request to use the procedure for board residency requirement waivers set forth in 12 C.F.R. §5.43 (to the extent permitted for national banks) to request waivers from the Division for board residency requirements under §362.245 RSMo. is approved; provided that the exercise of this activity shall be subject to the same limitations and prescribed standards applicable to a national bank, specifically:

- A Missouri state-chartered bank or trust company shall file a written waiver request with the Division seeking approval of an exception to the residency requirement set forth in §362.245; and
- The Division may approve or deny such a request in its discretion and may grant or revoke a waiver on an individual basis or for any number of director positions.

Notwithstanding the provisions of 12 C.F.R. §5.43(d) and (e), the process to respond to or appeal the Division's decision regarding a waiver shall be subject to applicable state law.

This letter will be filed today with the Office of the Missouri Secretary of State and posted on the public internet website of the Division. It will become effective 10 days after filing with the Secretary of State. If you have any questions regarding this matter, please contact James Gallaher, Division of Finance General Counsel.

Sincerely,



Mick Campbell  
Commissioner

MC:cg