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301 West High Street  
P.O. Box 716  
Jefferson City, Missouri 65102-0716  
(573) 751-3242  
(573) 751-9192-FAX  
www.missouri-finance.org

October 3, 2001

Re: Request to exercise powers under Section 362.106 RSMo Supp. 2001  
Activity requested: Investment in Bank Premises

The Missouri Division of Finance has received your letter dated September 6, 2001. Based on your letter and subsequent discussions, we understand that you are requesting authority under Section 362.106(4) RSMo Supp. 2001 to be authorized to conduct an activity that national banks are expressly authorized by federal law to conduct. Specifically, we understand that the power requested is to invest in bank premises through expansion and remodeling of existing offices to the same extent and under the same procedure authorized for national banks under 12 C.F.R. 5.37(d)(3).

Your letter did not include copies of the specific law authorizing the requested power for national banks or documentation indicating that your institution meets the prescribed standards. However, based on our discussions with your staff, we are supplementing your letter with copies of 12 U.S.C. Sections 29, 93a and 371d, and 12 C.F.R. 5.37, which are attached hereto and incorporated herein by reference. Your institution is free to resubmit your request with additional authorizing law, if you believe such relevant law is available, or to recharacterize the power sought if you prefer.<sup>1</sup>

### **Summary**

Under current law, any state bank can invest in expansion or remodeling of bank premises without prior Commissioner approval if the bank's total investment in fixed assets does not exceed 50 percent of its unimpaired capital (which is defined to include common and

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<sup>1</sup> We understand that your inquiry does not include a request to exercise the power of national banks under 12 C.F.R. 5.37(d)(1) and (2). This power authorizes national banks to invest directly or indirectly, without regulator approval, in bank premises in any amount that, when aggregated, does not exceed the "capital stock" of the bank. However, under this national bank rule, "capital stock" is defined to be only the common and preferred stock, and does not include undivided profits, surplus, or the allowance for loan and lease losses. A national bank acting under this rule and wishing to invest additional amounts must obtain prior approval from its regulator. The current power of state banks under 4 CSR 140-2.060 to invest in expansion or remodeling of bank premises without prior Commissioner approval if the bank's total investment in fixed assets does not exceed 50 percent of its entire capital account (including stock, surplus, undivided profits and the allowance for loan and lease losses) remains in place and will, in most cases, authorize a higher threshold for investment in fixed assets than 12 C.F.R. 5.37(d)(1) and (2). Certain real estate acquisitions may still require approval under Sections 362.105.1(10) and 362.105.2 RSMo. Supp. 2001.

preferred stock, undivided profits, surplus and allowance for loan and lease losses). This letter authorizes an additional power for well capitalized state chartered banks with a CAMELS 1 or 2 composite rating. These banks are now authorized to invest additional amounts in bank premises through expansion or remodeling up to an aggregate bank premises investment of 75 percent of capital and surplus (also defined as including common and preferred stock, undivided profits, surplus and allowance for loan and lease losses) without prior approval. The banks exercising this new power must notify the Commissioner within 30 days of the investment. This new power is not available for *de novo* banks for their first three years after chartering. Federal Reserve member banks must still comply with Federal Reserve regulation 12 C.F.R. 208.21 regarding investment in bank premises.

Investments in bank premises over 75 percent of capital and surplus will require prior approval by the Commissioner.

This letter does not address acquisition of real estate by a bank, because that was not the activity requested. Banks are still required to obtain approval under Section 362.105 RSMo. for the acquisition of real estate in certain cases.

Your bank qualifies for the new power because the bank is well capitalized (and will remain so after the investment) and has a CAMELS 1 or 2 composite rating. It is also more than three years old. Therefore, you may make the requested additional investment in bank premises for remodeling and expansion so that the aggregate bank premises investment is between 50 percent of unimpaired capital and 75 percent of capital and surplus, by providing a notice within 30 days after making the investment. Because your bank is a Federal Reserve member bank, it must comply with 12 C.F.R. 208.21 also to make the investment. The real estate acquisition provisions in Section 362.105 RSMo. are not applicable to your request because it does not involve the acquisition of real estate, only expansion and remodeling of existing buildings. If your total bank premises investment will exceed 75 percent of capital and surplus, you must seek prior approval of the Commissioner.

#### **National Bank Authority**

Under 12 C.F.R. 5.37(d)(3), a national bank that is rated “1” or “2” under the Uniform Financial Institutional Rating System (CAMELS) can make investments in expansion and remodeling of bank premises without prior regulator approval if the aggregate investment in bank premises does not exceed 150 percent of the bank’s “capital and surplus;” provided that the bank must be well capitalized as defined in 12 C.F.R. Part 6 and continue to be well capitalized after the investment or loan is made. “Capital and surplus” includes common and preferred stock, undivided profits, surplus, and the allowance for loan and lease losses. A bank using this authority must notify its regulator in writing of the investment within 30 days after the investment or the loan is made. This notice must include a description of the bank’s investment. Investments over 150 percent of capital and surplus require prior approval of the regulator.

### **Commissioner's Finding**

The Commissioner hereby determines that the activity described above that is authorized for national banks under 12 C.F.R. 5.37(d)(3) is not an unsafe or unsound practice provided that the institution involved meets certain limitations on the activity as set forth in this letter. To the extent the activity is not exercised consistently with the limitations set forth in this letter, the Commissioner determines it to be an unsafe or unsound practice, and, therefore, unauthorized under Section 362.106 RSMo. Supp. 2001.

The Commissioner finds that a Missouri state chartered bank that is rated "1" or "2" under the Uniform Financial Institution's Rating System (CAMELS) may make an investment in bank premises expansion or remodeling without the Commissioner's prior approval if the aggregate investment in bank premises does not exceed 75 percent of the bank's capital and surplus (defined as including common and preferred stock, undivided profits, surplus and allowance for loan and lease losses), provided that the bank must be well capitalized as that term is defined in 12 C.F.R. Part 6 and must continue to be well capitalized after the investment or loan is made. A state bank exercising this power shall notify the Commissioner in writing of its investment within 30 days after the investment or loan is made and the notice must include a description of the bank's investment. Minor amounts of investment, generally defined as miscellaneous expenses less than one percent of the total investment in bank premises per year and not part of a larger obligation or investment, will not require a separate 30-day post notice. Any investment resulting in aggregate bank premises investments over 75 percent of capital and surplus would require prior approval by the Commissioner under 4 CSR 140-2.060.<sup>2</sup>

In addition, the Commissioner hereby determines that this activity is unsafe and unsound if exercised by any Missouri state chartered bank within the first three years of obtaining a charter. This limitation is based on the special needs of *de novo* banks for liquidity, operating capital and earning assets and the need to anticipate potential early operating losses.

For purposes of this letter, "bank premises" is defined as in 12 C.F.R. 5.37(c), and Missouri state chartered "bank" is defined to include a Missouri state chartered trust company.

**Status of Prior State Law** The power of all Missouri state chartered banks to invest in bank premises as authorized under Regulation 4 CSR 140-2.060 remains unchanged by this letter. Also, the authority granted in this letter does not limit or affect in any way the requirement for banks to obtain approval of certain real estate acquisitions under Sections 362.105.1(10) and 362.105.2 RSMo.

The powers of the Missouri Division of Finance to ensure the safety and soundness of Missouri financial institutions are not affected by this letter. The Division may continue to use all

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<sup>2</sup> The Division has found that less than 1 percent of state and national banks have investments in bank premises exceeding 75 percent of capital and surplus. The extraordinary situation in which an investment of this size is necessary requires a safety and soundness review to assess the severity of the effect of the investment on earnings, the validity of a plan to address earnings limitations and the lower level of earning assets caused by the investment. These factors resulted in the determination of the safety and soundness threshold of 75 percent of capital and surplus.

its authority under Chapters 361 and 362 RSMo to limit any investments by banks that may be unsafe or unsound considering the condition of the bank, such as entering into written agreements with the banks or issuing cease and desist orders against banks.

**Status of FDIC and Federal Reserve Regulations.** The authority granted in this letter does not limit or affect in any way the requirements for state chartered banks under the regulations of the Federal Deposit Insurance Corporation or the Federal Reserve. Specifically, state banks that are Federal Reserve members must comply with 12 C.F.R. 208.21 regarding investment in bank premises. This regulation, which is attached, includes standards that differ from both the Missouri state regulations and Office of the Comptroller of Currency regulations for national banks. The FDIC has no regulation that specifically limits investment in bank premises more than the amount allowed for national banks.

This letter will be posted on the public internet website of the Division of Finance, and will become effective within 10 days after filing in the Office of the Missouri Secretary of State.

If you have any questions regarding this interpretive letter, please contact Gregory D. Omer, our chief counsel.

Very truly yours,

D. Eric McClure  
Acting Commissioner