



**Rules of
Department of Commerce and
Insurance
Division 1135—State Banking Board
Chapter 2—Hearings**

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**Title 20—DEPARTMENT OF
COMMERCE AND INSURANCE
Division 1135—State Banking Board
Chapter 2—Hearings**

20 CSR 1135-2.010 Rules of Procedure

PURPOSE: The State Banking Board was established to hear appeals from certain decisions of the commissioner of finance. In order to facilitate these appeals, the board is authorized to issue rules of procedure governing the manner in which those hearings shall be called, the taking of evidence, oral and written argument and the making of decisions.

(1) Definitions. As used in these rules, except as otherwise required by the context—

(A) Commissioner shall mean the commissioner of finance;

(B) Board shall mean the State Banking Board;

(C) Presiding officer shall mean the presiding officer of the State Banking Board or any other member of the board designated by the presiding officer to assume those duties;

(D) Appellants shall mean persons who are appealing a decision of the commissioner of finance; and

(E) Intervenors shall mean persons allowed by law to intervene.

(2) Records of the Board. The secretary of the board shall maintain a complete record of all proceedings of the board. All orders issued by the board and all orders or other actions of the board shall be certified or authenticated by the secretary by his/her signature.

(3) Pleadings shall be bound at the top, shall be typewritten on paper eight and one-half inches by fourteen inches (8 1/2" × 14") in size and exhibits, except maps annexed to the pleadings, wherever practical, folded to that size. Typing shall be on one (1) side of the paper only and shall be double spaced, except that footnotes and quotations in excess of a few lines may be single spaced. Briefs may be typewritten upon paper eight and one-half inches by fourteen inches (8 1/2" × 14") in size or printed on paper six inches by nine inches (6" × 9") in size. Reproduction may be of any process, provided the copies are clear and permanently legible.

(4) Title and Number. Pleadings, briefs and other documents shall show the title of the proceeding before the board and shall show the name and address of the attorney, if any, on the flyleaf or at the end of the document. In the event the title of the proceeding con-

tains more than one (1) name as appellant or intervenor, it shall be sufficient to show only the first of those names as it appears in the first document commencing the proceeding.

(5) Appeal Allowed. Appeals will be allowed from the decision of the state banking commissioner as provided by law and the State Banking Board shall hear the appeal. At the time the appeal is to be heard, testimony will be taken by the State Banking Board on issues specifically raised by the notice of appeal and the application to intervene. The board will follow the practice of administrative agencies with respect to the admissibility of evidence in contested cases as provided for in section 536.070, RSMo and may receive evidence by deposition as provided in section 536.073, RSMo.

(6) Notice of Appeal. The party appealing from the commissioner's action, within ten (10) days of the commissioner posting notice of the action upon the bulletin board required to be maintained in accordance with section 361.110, RSMo, shall file a notice of appeal with the commissioner specifically stating which finding of the commissioner the party wishes to appeal. The commissioner shall post notice of the notice of appeal upon the bulletin board required to be maintained in accordance with section 361.110, RSMo. All persons wishing to be heard as intervenors shall make their application to intervene within ten (10) days of the posting and shall state specifically what ground, if any, other than those raised by the notice of appeal, the intervenors wish to raise.

(7) Docket. The commissioner's office shall maintain a docket of all proceedings and each proceeding shall be assigned an appropriate case number. The docket shall be available for public inspection during office hours.

(8) Hearing Calendar. The commissioner shall cause to be maintained a record of proceedings filed and proceedings set for hearing which shall be available for public inspection at the office of the Division of Finance in Jefferson City, Missouri.

(9) Prehearing Conference. The chairman of the board, or such other board member may be designated, may hold prehearing conferences for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or prepared expert testimony, limitation of the number of witnesses and such other matters as may expedite orderly conduct and disposition of the proceedings.

(10) Time and Place. Notice of the day, hour and place of hearing shall be served at least ten (10) days prior to the time set on all appellants and intervenors, unless the board shall find that public necessity requires hearings be held on shorter notice. Notice shall be served by mail, by the commissioner, at the direction of the board and a copy shall be mailed to each party designated as applicant or intervenor. The hearing shall be held at a place convenient to all parties as determined by the presiding officer.

(11) Limiting Number of Witnesses. To avoid unnecessary cumulative evidence, the presiding officer may limit the number of witnesses or the time for testimony on a particular issue.

(12) Who May Practice Before the Board. Only those persons who are licensed attorneys in Missouri or persons licensed as attorneys in other states, as provided, shall be permitted to practice before the board. Nonresident attorneys who are not members of the bar of Missouri shall be permitted to practice before the board under the same rules and limitations as an attorney in good standing in Missouri would be permitted to practice before the corresponding board, official or other body of the state of the resident of the nonresident attorney. An individual who is a party may act as his/her own attorney if s/he desires.

(13) Form and Admissibility. The board will follow in general the practice in the circuit court of the state and the common law rules on admissibility of evidence as interpreted by the courts of the state, except that the board may permit the introduction of hearsay evidence when, in its opinion, circumstances require.

(14) Ruling. The presiding officer shall rule on the admissibility of all evidence. That ruling may be reviewed by the board in determining the matter on its merits.

(15) Objections and Exceptions. When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exception to rulings are unnecessary and need not be taken.

(16) Offer of Proof. When a party wishes to make an offer of proof for the record, that offer shall consist of a statement of the substance of the evidence to the admission of which objection has been sustained.

(17) Prepared Testimony. With the approval



of the presiding officer, a witness may read into the record his/her testimony and direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies to the presiding officer, the court reporter and counsel for all parties. Admissibility of testimony shall be subject to the rules governing oral testimony. If the presiding officer deems that substantial saving of time will result without prejudice to any party, prepared testimony may be copied into the record without having the witness read it aloud; provided, however, that the witness shall be available for cross-examination by any party other than the party on whose behalf the testimony is admitted.

(18) Documentary Evidence. If relevant, material matter offered in evidence is embraced in the document containing other matter, the party offering it shall designate specifically the matter so offered. If other matter in the document would unnecessarily encumber the record, the document will not be received in evidence but at the discretion of the presiding officer, the relevant material matter may be read into the record or copies received in exhibit. Other parties will be afforded opportunity to examine these documents and to offer into evidence other portions believed material and relevant.

(19) Stipulations. The parties may file a stipulation as to the facts or expected testimony and in this event the same shall be numbered and used at the hearing. This procedure is desirable wherever practical.

(20) Exhibits. Exhibits shall be legible wherever practicable; shall be prepared either on paper not exceeding eight and one-half inches by fourteen inches (8 1/2" × 14") in size or be bound and folded to that approximate size. Wherever practicable, the sheets of each exhibit should be numbered and, where necessary, explained by index.

(21) Marking of Exhibits. Exhibits shall be marked as follows: Appellants' exhibits shall be numbered consecutively in order of their introduction and numbered as follows: Appellant Exhibit 1 and Appellant Exhibit 2, etc; Intervenors' exhibits will be lettered alphabetically in the order of their introduction with the name intervenor, if more than one (1), following the word intervenor as follows: intervenor's Exhibit A, intervenor's Exhibit B, etc. The board's staff exhibits will be marked numerically. When exhibits are offered in evidence, the original and two (2) copies shall be furnished to the reporter and the party offering the exhibit should also be

prepared to furnish a copy to each member of the board sitting.

(22) Board Records. If any matter contained in a document in the records of the Division of Finance is offered in evidence, that document need not be produced as an exhibit unless directed otherwise by the presiding officer, but may, be received into evidence by reference, provided, that the particular portions of that document are specifically identified and otherwise competent, relevant and material.

(23) Judicial Notice. Official and judicial notice may be taken of those matters as may be judicially noticed by the courts of Missouri.

(24) Additional Evidence. At the hearing the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, s/he may authorize the filing of specific documentary evidence as a part of the record within a fixed time after the submission, reserving exhibit numbers.

(25) Briefs. If counsel or any party requests permission to file a brief, the presiding officer shall fix the time for filing of briefs. Failure to request, at the close of the testimony, the fixing of time for filing briefs shall waive the right to subsequently file a brief.

(26) Decisions. Proceedings shall be submitted for the decision of the board after the taking of testimony and the filing of the briefs, as may be prescribed by the board or its presiding officer. The board's formal decision and order shall be issued as soon as practicable after the proceedings have been submitted. Decisions and orders shall be served by the commissioner's office by mailing certified copies to the parties of record. When service is not accomplished by mail, it may be effected by personal delivery of a certified copy of the order or decision. When a party to a proceeding has appeared by representative, service upon that representative shall be deemed service upon the party.

(27) Construction of Rules. These rules shall be liberally construed to secure just, speedy and inexpensive determination of all issues presented. These rules may be amended at any time by the board.

(28) Forms. The following forms of Notice of Appeal and Intervenors Reply are merely illustrated as a general form. The content of particular pleadings will vary depending upon the subject matter and applicable procedural

rules.

(A) Notice of Appeal.

BEFORE THE STATE BANKING BOARD
OF THE STATE OF MISSOURI

IN THE MATTER OF THE DENIAL OF
THE COMMISSIONER OF FINANCE OF
THE PROPOSED APPLICATION FOR
CHARTER OF THE ABC BANK

NOTICE OF APPEAL

You are hereby notified that an appeal is taken from the decision of the Commissioner of Finance refusing a charter to the ABC Bank for the following reasons:

1. The Commissioner was in error in finding that the convenience and need of the community of Squirrely would not be served by the granting of said application. (State any other specific ground relied on in the appeal.) WHEREFORE, petitioner prays said charter be granted as petitioned for.

PROPOSED ABC BANK
By Its Attorney
(Mailing Jurat in Standard Form)

(B) Application of Intervenor.

BEFORE THE STATE BANKING BOARD
OF THE STATE OF MISSOURI

IN THE MATTER OF THE DENIAL OF
THE COMMISSIONER OF FINANCE OF
THE PROPOSED APPLICATION FOR
CHARTER OF THE ABC BANK

APPLICATION OF INTERVENOR

Comes now the DEF Bank and states to the Banking Board that it is located in Squirrely, Missouri, the site of the proposed ABC Bank, and in its opinion said intervenor will be adversely affected. Your intervenor wishes to intervene on its own behalf and states to the board:

1. That the Commissioner of Finance was correct in his finding and ruling that the convenience and need of Squirrely, Missouri, would not be served by the granting of said charter. (Here in numerical fashion insert any other matters found by the Commissioner of Finance, to which Intervenor wishes to except or appeal.) WHEREFORE, the Intervenor prays that said charter will by this board be denied.

DEF BANK
By Its Attorney
(Mailing Jurat Standard Form)



(29) Costs. The board will obtain the services of a court reporter to transcribe the hearing. The costs of original and four (4) copies of the transcript shall be taxed against the losing party.

(30) Service of Process. The commissioner of finance or his/her deputy shall be the agent for service of process on the banking board in any appeal arising from a decision of the board.

AUTHORITY: section 361.095, RSMo 1986. This rule originally filed as 4 CSR 50-2.010. Original rule filed April 9, 1975, effective April 19, 1975. Amended: Filed March 16, 1977, effective Aug. 15, 1977. Amended: Filed April 9, 1977, effective Aug. 15, 1977. Moved to 20 CSR 1135-2.010, effective Aug. 28, 2006.*

**Original authority: 361.095, RSMo 1975.*

Washington Commercial Bank v. Bollwerk, 582 SW2d 695 (Mo. App. 1979). Even though commissioner's certificate of incorporation was dated January 7, 1977, by stipulated fact the action of the commissioner was not deemed "final" until January 11, 1979. Therefore, intervenor's notice of appeal filed January 20, 1977, was timely. Also, language in the notice of appeal stating that ". . . requisite capital has not been subscribed in good faith and all thereof actually paid up in lawful money of the United States in the custody of the persons named as the first board of directors. . ." was sufficient to raise the issue of composition and availability of the proposed bank's capital on appeal.

Farmers Bank of Antonia v. Kostman, 577 SW2d 915 (Mo. App. 1979). Request for a facility under section 362.108, RSMo (Supp. 1976), if opposed by a competitor, constitutes a contested case. Therefore, the proper route of appeal is from the director to the State Banking Board, then to the circuit court under section 536.100, RSMo contested case provisions.

Kostman v. Pine Lawn Bank & Trust Co., 540 SW2d 72 (Mo. banc 1976). The commissioner of finance does not have the legal right or standing to seek review in circuit court from a decision and order of the State Banking Board. S/he is not an "aggrieved party" within the meaning of section 536.100, RSMo. The weight of authority negates the right of an administrative officer of a branch of government, who has suffered defeat at the hands of an administrative tribunal with jurisdiction to review his/her actions, to invoke judicial review of an administrative

tribunal's decision absent statutory authority to do so.

Mark Twain Bancshares Inc. v. Kostman, 541 SW2d 1 (Mo. App. 1975). A corporation is not a "person" within the meaning of section 362.030, RSMo and may not be an incorporator and applicant for a new bank. The commissioner of finance and the Banking Board have rulemaking powers that could be used to clarify some of the questions raised by holding company operations. Use of the rulemaking authority on these questions would do much to ensure fair and even regulation of bank holding companies, while also allowing all banks the opportunity to be heard on decisions which can substantially affect their operations even though they are not parties to a given case.