Banks and Banking—Excessive Loans.

Held, that when the combined notes of an individual in the hands of a bank are in excess of 20 per cent of the capital and surplus, they constitute an excess loan under Section 6059 of the Revised Codes of 1921, and that it is immaterial whether such notes came to the bank by a direct loan to the maker or by virtue of a discount of notes.

L. Q. Skelton, Esq.,
Superintendent of Banks,
Helena, Montana.

My dear Mr. Skelton:

You have submitted for an opinion of this office the following question:

> "Company A is a direct borrower from a bank under examination. Company A also has other borrowings from other parties. In due course, the bank under examination buys one of its notes indorsed by payee thereof. In case the combined notes in the hands of the bank under examination are in excess of one-fifth of the capital and surplus of the bank under examination, does the same constitute an excessive loan under Section 40 of the Bank Act?"

Section 40 of Chapter 89 of the Laws of 1915, known as the Bank Act, reads as follows:

> "The total liabilities of any person, co-partnership, or corporation to any bank for money borrowed, including in the liabilities of a co-partnership the liabilities of the several members thereof, shall at no time exceed 20 per centum of the amount of the capital and surplus of such bank; but the discounting of commercial paper actually owned by the person negotiating the same, and loans made on warehouse receipts and bills of lading representing actual value, shall not be considered as the borrowing of money."

The latter portion of Section 40 refers to the situation as between the owner of a note procuring discount of the same and the bank, and has no reference to the maker of the note. The statute prohibits "total liability" to the bank of one person, co-partnership, or corporation in excess of 20 per cent, and that a note, though purchased by the bank in due course from a third person is a liability of the

maker, cannot be gainsaid. (3 R. C. L. 979.) The endorser and discounter of the note not being the borrower, it necessarily follows that the maker is the borrower under the above statute.

The situation presented by you was involved in the case of Wickliffe v. Turner, 157 S. W. 1125, and the court there said:

> "Within the purview of the statute, it is immaterial whether the bank lends the money to the person and takes his note for it or buys his paper from another. The proper effect of the statute would be entirely defeated if it were held that, though the bank could not lend money to another above the limits prescribed, it could buy his paper to any limit from other persons. The statute was designed to protect the bank against the risk of a heavy loss by reason of an indebtedness being created to it from one person above the limits prescribed."

It is therefore my opinion that when the combined notes of an individual in the hands of a bank are in excess of 20 per cent of the capital and surplus, they constitute an excess loan under Section 40 of Chapter 89 of the Laws of 1915 (Sec. 6059, Rev. Codes of 1921), and that it is immaterial whether such notes came to the bank by a direct loan to the maker or by virtue of a discount of notes in regular course.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.