

### State Banks—Surety on Bonds.

A State bank under the laws of Montana has no power to become a surety on a bond.

H. S. Magraw, Esq.,  
Superintendent of Banks,  
Helena, Montana.

My dear Mr. Magraw:

I have your letter asking an opinion on the following question:

“Whether or not a State bank is permitted legally to become surety on a bond.”

Section 4 of Chapter 89 of the 14th Session Laws of Montana defines “commercial banks” as “any bank authorized by law to receive deposits of money, deal in commercial paper, or to make loans thereon, or to lend money on real or personal property, and to discount bills, notes, or other commercial paper, and to buy and sell securities, gold and silver bullion, or foreign coins, or bills of exchange.”

Section 5 of the same chapter says a “savings bank” means “a bank organized for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may loan and invest the funds thereof, receive deposits of money, loan, invest, and collect the same, with interest, and repay depositors with or without interest, with power to invest said funds and moneys in such property, securities, and obligations as may be prescribed by this Act; and to declare and pay dividends on its general deposits, and a stipulated rate of interest on deposits made for a stated period, or upon special terms.”

There is nothing to be found in the laws of this State giving a commercial or savings bank any powers beyond those set out in the foregoing sections. With the exception of those corporations, such as trust and guaranty companies, which are organized for the express purpose of becoming sureties for other persons or corporations, it is

a general rule that no corporation has the power, by any form of contract or indorsement, to become a guarantor or surety, or otherwise to lend its credit to another person or corporation.

If a bank is allowed to become surety on a bond, it is being put in the position of pledging the funds of the stockholders and depositors as a guarantee for another person or corporation.

There is certainly nothing in Sections 4 and 5 of Chapter 89, *supra*, that could be construed, even giving it the most liberal construction, as giving this power to either commercial or savings banks.

These banks are corporations, organized and existing by virtue of statutory enactments of the Legislature. They have no powers beyond those expressly given by the Legislature, and the statutes must be strictly construed.

It is, therefore, my opinion that the act of a State bank in becoming surety on a bond is *ultra vires*, and you are advised that the laws of this State do not permit State banks to assume the risk of acting as a surety on a bond.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.