

Trust Companies—Foreign Corporations—Trustees—Admission.

A foreign trust company organized under the laws of a foreign state may not be admitted to act as a trustee in Montana, the banking act excluding such companies.

W. E. Harmon, Esq.,
Secretary of State,
Helena, Montana.

August 9, 1929.

My dear Mr. Harmon:

You have requested my opinion whether a trust company organized and existing under the laws of Ohio may be admitted to Montana for the purpose of acting as a trustee in this state.

The legislature, by enacting Chapter 89 of the Session Laws of 1927, revised and codified the bank laws of Montana and provided therein that the word "bank" as used in the act should be construed to mean any corporation which shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust or investment business as defined in the act.

It is further provided that it shall be unlawful for any corporation, partnership, firm or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose and that banks are divided into the following classes: (a) commercial banks; (b) savings banks; (c) trust companies; (d) investment companies. It is further provided in the act that the term "trust company" as used therein means any corporation which is incorporated under the laws of this state for any one or more of the purposes set out in the statute, among which is the business of acting as a trustee.

It therefore appears that the right to act as a trustee insofar as corporations are concerned is confined to a corporation incorporated under the laws of Montana, and that it would be unlawful for a foreign corporation organized under the laws of Ohio or any other state to act as trustee in this state.

The act on its face apparently contains contradictions in that it first appears that only a trust company organized under the laws of Montana may do business in this state, and at other places it refers to corporations "domestic or foreign" doing a banking business in Montana as defined by the statute, but upon reading the history of the banking laws of Montana this ambiguity apparently is explained away. At one time in Montana foreign corporations could maintain branch banks in Montana and when the legislature first excluded foreign banks from doing business in Montana they inserted a proviso in the law that the act excluding them should not apply to branch banks doing business in the state at the time of the enactment of the law excluding foreign banks and the subsequent legislation upon the point omitted this proviso because evidently there were no branch banks doing business in Montana, but the other parts of the law relating to foreign corporations were retained in the subsequent legislation and are found in it at the present time.

It is apparent, however, that when our present law refers to "foreign corporations doing business in this state" that it means branch banks of foreign corporations which at one time could do business in

Montana, and which, as stated before, were excepted from the provisions of the first law which prohibited foreign corporations from doing a banking business in Montana.

It is therefore my opinion that under our present statutes a trust company organized under the laws of Ohio, or any other state, may not qualify to do business as a trustee in Montana.

Very truly yours,

L. A. FOOT,
Attorney General.