

VOLUME NO. 36**Opinion No. 91**

BANKS AND BANKING — Banking day; UNIFORM COMMERCIAL CODE — Banking day; Sections 5-1055, 87A-1-103, 87A-3-508, 87A-4-104, Revised Codes of Montana 1947.

HELD: Saturday should not be considered a banking day for the purpose of determining midnight deadlines for banks open on Saturday for limited teller-type transactions.

July 6, 1976

Mr. Harold Pitts, Director
Department of Business Regulation
805 North Main
Helena, MT 59601

Dear Mr. Pitts:

By letter dated March 1, 1976 you requested an Attorney General's opinion on a question based upon a stated factual situation. The factual situation is this:

Montana law allows permissive closing of banks on Saturdays. (Section 5-1055, R.C.M. 1947) It is becoming an increasingly common practice for banks to choose not to avail themselves of the permissive Saturday closings and open their drive-in facilities for a portion of Saturday. This is done for public convenience and because of competition. In so opening, the banks offer normal teller services, i.e. cashing of checks, making of deposits and withdrawals, issuing travelers checks, receiving loan payments, etc. Some of the banks which are opening for these purposes on Saturday are considering items handled on Saturday as being received on Monday for the purpose of determining the midnight deadline for return of dishonored items as provided in the UCC. Under this method, those items handled on Saturday which are determined to be dishonored on Monday would have to be returned by midnight Tuesday in order to absolve the bank of liability.

With this factual situation in mind, the question presented is as follows:

Whether the midnight deadline as provided in the Uniform Commercial Code for the return of dishonored items would be Monday midnight or Tuesday midnight for a bank choosing to remain open on Saturday for teller-type transactions.

Section 5-1055, R.C.M. 1947 allows permissive Saturday closings and provides, in pertinent part, as follows:

Any bank . . . may, at its election, remain closed and refrain from the transaction of any business on Saturdays, and any Saturday on which any such bank remains closed shall be, . . . a holiday and not a business day. Any act, authorized, required or permitted to be performed at or by, or with respect to any bank as herein defined, . . . on a Saturday, may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday, or from the nonopening of any bank on any Saturday under the authority of this act, for the transaction of business.

This section merely permits a bank to close on Saturday and designates such days as not being business days. The section also provides that any business which must be performed on or by a Saturday when a bank is closed may be performed the next succeeding business day. While section 5-1055, *supra*, does not directly address the question, if taken alone it could be construed to mean that if a bank is open for "any business" on Saturday, it is a business day. It appears that section 5-1055, *supra*, uses the term "business day" in the same sense that the Uniform Commercial Code uses the term "banking day".

The Montana Uniform Commercial Code was adopted in 1963, and it was intended that the code be supplemented by existing principle of law unless disposed by particular provisions of the Code itself. Section 87A-1-103, R.C.M. 1947. Several provisions of the Uniform Commercial Code are pertinent to this discussion. Section 87A-3-508, R.C.M. 1947, Notice of Dishonor, provides in part:

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

This section and provisions of official comment #2 of the Commission on Uniform State Laws indicate that it is the legislative intent that banks give prompt notice of dishonor while individuals are allowed three full business days. "Midnight deadline" as it is used in this section is defined in section 87A-4-104, R.C.M. 1947 as follows:

...with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which time for taking action commences to run, whichever is later:

"Banking day" is defined in the same section to be:

...that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

It is important to note than in official comment #1 to section 87A-4-104, *supra*, the Commission on Uniform State Laws stated:

"Banking Day." Under this definition that part of a business day when a bank is open only for limited functions, e.g., on Saturday evening to receive deposits and cash checks, but with loan, bookkeeping and other departments closed, is not part of a banking day.

The official comments to the Code are widely recognized as one of the more useful aids in the interpretation and construction of Code provisions. The official comments have, on several occasions, been utilized by the Montana Supreme Court in construing various sections of the Code. **Cargill Incorporated v. Wilson**, ——— Mont. ———, 532 P.2d 988 (1975); **Sun River Cattle Co., Inc., v. Miners Bank of Montana, N.A.**, 164 Mont. 237, 521 P.2d 679 (1974).

Under the assumed set of facts you have supplied it is evident that the banks are open Saturday morning for limited functions. The drive-in facilities are open providing only normal teller services. The loan, bookkeeping and other departments of the bank are closed. In light of this comment it is clear that when a bank opens for limited functions, it is not necessarily a "banking day" as defined in section 87A-4-104, *supra*.

There is no doubt that the language of section 87A-4-104(1) (c), *supra*, could be clarified in this regard. For example, Connecticut has amended their definition of "banking day" to read as follows:

"Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions, **but for the purpose of determining a bank's midnight deadline, as defined in subsection (h) of this section shall not include Saturday;**

An amendment such as this would be advisable in Montana, as it would reduce any uncertainty contained in the statute. Even without the amendment, however, I believe that the legislative intent in Montana is discernable.

THEREFORE, IT IS MY OPINION:

Saturday should not be considered a banking day for the purpose of determining midnight deadlines for banks open on Saturday for limited teller-type transactions.

Very truly yours,

ROBERT L. WOODAHL
Attorney General