

**Taxation National Banks—Bank Stock, Assessment Of.**

Under Section 3691, et seq., Political Code, the shares of a national bank are taxable to the holders thereof, and the value of such shares is ascertained by adding to the capital stock of the bank its surplus and reserve fund and subtracting from the same the value of the real estate owned by the bank.

Shares of stock in a national bank should be assessed to the individual owners thereof, and the real estate owned by the bank should be assessed to the corporation.

Opinion of attorney general to C. L. Harris, county attorney, of June 27, 1904, referred to and distinguished.

Helena, Montana, June 20, 1905.

Hon. Harry L. Wilson, County Attorney, Billings, Montana.

Dear Sir: Your letter of the 14th instant, submitting for construction the state law relating to the taxation of national banks, received. It is well established that the property of a national bank cannot be taxed by a state except by permission of congress, and it has been held in *First National Bank v. Province*, 20 Mont., 374, that such permission has never been given to the state, so far as it relates to personal property, and that personal property of a national bank cannot be taxed by the state.

Sections 5214 and 5219, of the revised statutes of the United States, provide the manner of taxing national banks and gives permission to the state to tax the shares of banking associations, and also to tax the real estate owned by national banks. Whatever may be the custom prevailing with reference to the bank assuming and paying the taxes assessed against shares, yet, so far as the legal phase of the questions is concerned, the shares in a banking association must be regarded as being assessed to and against the shareholder and not against the association which issues such shares.

The method of ascertaining the value of the shares is provided by our statute in Sections 3691, 92, 93 and 94, Political Code. This method I understand, in short, to be that the value of the shares in the aggregate is ascertained by adding to the capital stock of the bank its surplus and undivided profits and then deducting from this sum the value of the real estate, the remainder thus obtained being the assessable value of the shares of stock held by the individuals. The real estate should be assessed directly to the bank.

It is immaterial, so far as the state is concerned, whether this real

estate was legally acquired or not. The state authorities can go no farther than to make inquiry as to whether the bank is the owner of the real estate. If a national bank violates the laws of congress relative to acquiring and holding real estate, a federal question is presented, to be determined by federal authority.

The letter of the attorney general, addressed to Mr. C. L. Harris, County Attorney, dated June 27, 1904, correctly states the law, except, perhaps, a wrong inference might be drawn from the use of the term 'legally acquired real estate,' used therein.

The case of Daly Bank & Trust Company v. County Commissioners, Silver Bow County, which will be argued and submitted to the supreme court on the 22nd instant, involves the consideration of these sections of our statute. That, however, is a state bank and the decision may not extend to an interpretation of the law as it relates to a national bank.

The case of Illinois National Bank v. Kinsella, county treasurer, reported in 66 N. E. 338, contains a very good discussion of the power of the state to tax the shares of a national bank, in which the court held that it is not double taxation to tax both the shares and the real estate owned by the bank, though the value of the real estate is not subtracted from the value of the shares, and if it were not for our statute—Section 3693, Political Code—the value of the shares would consist of the capital stock of the bank plus the surplus and reserve, without any deduction being made on account of the real estate holdings by the bank.

Very respectfully submitted,

ALBERT J. GALEN,

Attorney General.