

**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.

Helena, Montana, June 29, 1905.

Hon. T. J. Porter, County Attorney, Miles City, Montana.

Dear Sir:—I am in receipt of your letter of the 27th instant, in which you state "The first national bank of this city during the past year has acquired from two parties, who are indebted to it, real estate worth approximately \$30,000. \* \* \* These parties, being indebted to the bank, deed the real estate to the bank and then leased it from the bank and continued to occupy and use it paying a rent. It was further agreed that these parties might, if they so desired, within one year repurchase the real estate by paying the amount of the debt and interest."

The propositions submitted by your letter, on which you ask an opinion from this office, are:

1. Whether or not the county commissioners have the power to cause this property to be assessed as it was last year, the present occupant being at that time indebted to the said bank and now having merely an option to purchase for the amount of the debt?
2. How shall the commissioners proceed, both in regard to the

assessment of the bank stock and also the assessment of this real estate, as against its former owner and present occupant?

Under the provisions of Section 5214 and 5219, Revised Statutes of the United States, and the decision of the supreme court of Montana in *First National Bank v. Province*, 20 Mont. 374, and the federal cases therein cited, no property of a national bank may be assessed or taxed by a state except by permission of congress, and that such permission of congress has never been extended to personal property. The authority for taxing the shares of stock in a national bank to the shareholders and for taxing the real estate owned by the bank is given in Section 5219, *supra*.

Section 3691, et seq., Political Code of Montana, provide the manner of taxing shares of stock in banking associations, it being therein provided that the value of the real estate must be deducted from the value of the stock. The method of ascertaining the value of the shares of stock, I understand 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 assessed value of the real estate "of such bank," 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. If the bank is the actual owner of the real estate it is entitled to have the deduction made. However, if the alleged conveyance is merely a mortgage and does not pass title, the bank, of course, is not the owner but is only a lien-holder. But if the title to the land has passed to the bank and is held by it, and was so held on the first Monday in March, when the property became liable for taxation, the duty does not rest with the state officials to dispute the legality of the holding. 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. In this case, if the bank was the owner of that real estate at 12 o'clock noon on the first Monday of March last, its assessed value should be deducted from the value of the shares of stock, ascertained in the manner above indicated, and the shares of stock should be assessed to the shareholders and the real estate should be assessed to the bank. The fact that the parties from whom the bank acquired the real estate have an option to purchase the property from the bank can have no bearing upon the case unless the deed held by the bank is in reality only a mortgage.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.