

Foreign Banking Corporations, Taxation Of. Taxation of Private Banks. Examination of Banks. Fees, Payment Of.

Under Chapter 104, Laws of 1905, page 232, foreign banking corporations should pay the fees and make the reports required by that act.

The proviso contained in Section 15 of the act, is void, as being in conflict with Section 11, Art. 15, of the State Constitution.

If the act of 1905 is void in toto Chapter C, laws of 1903, page 184, applies, which makes, substantially, the same requirements.

Helena, Montana, Feb. 9th, 1906.

Hon. T. E. Collins, State Examiner, Helena, Montana.

Dear Sir:—I have the honor to acknowledge receipt of your communication of January 31, 1906, from which and the accompanying papers it appears that the Aetna Banking and Trust Company is a foreign banking corporation, not a national bank, with a capital stock of \$100,000.00, and is doing business in Silver Bow County, Montana, but that it has refused to make any report to your office and has also refused to pay the fee of \$100.00 or any part thereof, to the State Treasurer.

The making of these reports and the payment of this fee is required by Chapter 104, Laws of 1905, page 232.

The proviso which forms a part of Sec. 15 of this Act, to the effect that the provisions of the act shall not apply to any corporation engaged in banking at the time of the approval of the act, is in direct conflict with Sec. 11, Art. 15 of the State Constitution, which provides, in part.

“And no company or corporation formed under the laws of any other country, state or territory, shall have or be allowed to exercise or enjoy within this state, any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state.”

This provision of the constitution is self executing.

Criswell v. M. C. Ry. Co., 18 Mont. 167.

The act of the legislature in question, relates to foreign corporations of the character named in your letter, and if those companies doing business in the state at the time of the approval of the act are exempted from its provisions, operations and requirements, it would necessarily follow that such foreign corporations would be given a privilege which did not extend to any domestic corporation similar in character. This proviso, however, may be stricken from the law without invalidating the remaining part of the act.

Northwestern Mutual Life Insurance Company v. Lewis and Clark County, 28 Mont. 484.

If the proviso in said Section 15 of the Act of 1905 invalidates the whole of the act, we will then probably have to look to Chapter C, Laws of 1903, page 184, for our authority. This latter act, when considered alone, is susceptible of the construction that it applies only to domestic corporations, but when read in connection with the provision of the constitution above quoted, it is apparent that foreign corporations cannot es-

cape its mandates, for they would thereby be given a greater privilege and greater rights "than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state."

The purpose of this examination is to protect depositors and patrons of a bank as well as to protect the rights of the state, and we cannot presume any legislative intent to the effect that certain banks should not be subject to examination and should not be required to make any reports, while all other banks of the same kind and class must be examined and must make reports as provided by law. The banking laws of the state are not restricted in their application to banks which began business subsequent to a certain date.

We think this bank should make its reports and pay this fee the same as any other foreign corporation transacting a like business.

Respectfully submitted,

ALBERT J. GALEN,

Attorney General.

Note:—Question up on appeal before Supreme Court in case of State of Montana vs. Aetna Banking and Trust Company. Decided April 30th, 1906, by Judge Clements, District Judge, adversely to states contention. Now pending on appeal.