

Building and Loan Associations, Foreign.

The Act of 1907 prohibits any foreign building and loan association from entering this State to do business, after its passage, but does not prohibit a foreign association then authorized to do business in the State from continuing its business upon compliance with the law.

Helena, Montana, June 7th, 1907.

Hon. F. H. Ray,
Assistant State Examiner,
Helena, Montana.

Dear Sir:—

I am in receipt of your favor of the 4th ult., inquiring as to whether or not a foreign building and loan association can now legally transact business in the State of Montana.

The Code provisions relating to "building and loan corporations," and "building, loan and saving associations," are found in Section 770 to 790, and Sections 800 to 845, Civil Code. All of these sections, except Section 805, were directly repealed by the Act of March 4, 1897 (Laws 1897, page 231), and said Section 805 is probably thereby repealed by implication. Section 4 of this Act of 1897 is amended by Act of March 3, 1899 (Laws 1899, p. 12). By the provisions of Chap. 104, Laws 1907, Sections 1, 17 and 25 of the 1897 Act are amended, and Sections 10, 11, 12, 13, 21, 22 and 27 of said Act are repealed. Section 1 of the 1897 Act is amended by the 1907 Act by striking out all reference to foreign associations and providing that "such associations shall be organized under the laws of this State relating to corporations * * *". The amendment to Section 17 relates to examinations by the State Examiner, and Section 25, as amended, makes it unlawful for any building and loan association to do business in this State without

first having complied with the provisions of the Act, and received a certificate of authority to do business from the State Examiner.

Sections 10, 11, 12, 13, 21, 22 and 27 of the 1897 Act, which were repealed by the Act of 1907, relate to the permission and conditions on which foreign associations may do business in this State, but Sections 9 and 14 of the 1897 Act, which also contain reference and provisions relative to foreign associations, are not repealed. The statutory law as it now stands, with reference to the right of "building and loan associations" to do business in this State, appears to be:

"Such associations shall be organized under the laws of this State relating to corporations, and shall be conducted under the banking laws of Montana." * * *

Section 1, Chap. 104, Laws 1907.

and

"All foreign and domestic associations authorized to do business in this State shall by the first day of March of each year, deliver or cause to be delivered to the county assessors of the several counties wherein their stockholders may reside, a list of the stockholders." * * *

Section 9, Act of 1897.

Section 14 of the Act of 1897, which relates to deposits made by foreign associations, and which is neither repealed nor amended by any subsequent law, provides:

"The deposit made with the State Treasurer shall be held as security for all claims of residents of this State against said association, and shall be liable for all judgments or decrees thereon, and subject to the payment of the same in the same manner as the property of other non-residents. Should any association cease to do business in this State, the State Treasurer may release sureties in his discretion, retaining sufficient to satisfy all outstanding liabilities and value of stock held by residents of the State of Montana."

This Act of 1907, by its terms, prohibits any foreign association from entering the State after its passage. Yet it does not directly prohibit a foreign association then "authorized to do business in this State," from continuing its business. No provision is made in the later Act for closing up the business of a foreign association then doing business in the State, and from this fact, and the law above quoted, it is quite evident that it was not the intention to drive from the State foreign associations then legally doing business within the State, and which had complied with all the requirements of law.

Section 10 of the 1897 Act, which is repealed by the law of 1907, requires foreign associations to make certain deposits with the State Treasurer, and to file certain papers with the Secretary of State, yet, if this foreign association is now legally within the State, it has already complied with this provision of law, and by the provisions of said Section 14, these deposits so made are to be held by the Treasurer as security, and by the new law (1907), read in connection

with the unrepealed part of the law of 1897. This association is subject to examination by the State Examiner, and must receive from him a certificate before it can legally continue to do business in the State. The safeguard of the patrons of this association, who reside in Montana, is found in the fact that this deposit still remains with the State Treasurer; and the further fact that this association is subject to examination by the State Examiner, and when it fails to comply with any provision of the law, or is found in an unsafe condition, it is within the province of the State Examiner to withhold from it authority to continue its business.

While it is true that under the provisions of Section 3, Art. XV, of the State Constitution, the Legislature has the power to alter, revoke or annul the authority of a corporation, yet, in view of the recent decision by the Supreme Court of the United States in *American Smelting and Refining Company vs. Colorado*, 27 Supreme Court Rep. 198, it would seem that the legislative enactment should not be given a construction which would oust a corporation legally within the State, when the law is equally susceptible of a construction which would permit said association to continue its business within the State, for if a charter partakes in any degree of the nature of a contract, it should not be abrogated by implication if any other construction is equally susceptible to the law as enacted.

Very truly yours, .

ALBERT J. GALEN,

Attorney General.