

**Banks, Use of Corporate Name by Unincorporated Bank.**

A private unincorporated bank is prohibited from using a corporate name for such bank, unless the word "unincorporated" be made a part of the name. There is no penalty fixed by the statute, and it is doubtful whether or not injunction would be the proper remedy to prevent a private bank from so using a corporate name.

Helena, Montana, August 4, 1909.

Hon. H. H. Pigott,  
State Examiner,  
Helena, Montana.

Dear Sir:

I am in receipt of your favor of July 31, in which you request an opinion upon the following questions:

"Is it proper for a private bank doing business to use a corporate name, with the word 'unincorporated' following same? And if this is proper, should the designation 'unincorporated' be of equal prominence as the name itself?"

"What penalty is prescribed for the unlawful use of a corporate name by private banks? And if section 4014, revised codes of 1907, prescribing penalty for violation of the banking law, does not apply, what course should be taken to prevent the use of corporate names by private banks?"

In an opinion given to the state examiner on April 16, 1908, (Opinions of Attorney General, 1906-08, page 256), we construed section 3910, revised codes, and defined what, in our opinion, would be corporate

names. Thereafter, in a verbal opinion given to the state examiner, we held that if the word "unincorporated" was made a part of a name, which otherwise would be a corporate name, that it would be a compliance with such law. However, in such case the word "unincorporated" should be made a part of the name and be of equal prominence as to the balance of the name. For example: "THE PEOPLES' BANK, UNINCORPORATED;" that is, the word "unincorporated" should be connected directly with the balance of the name, and of the same size and character of type. To use the name "People's bank" and then on a separate line or in small letters, to insert the word "unincorporated," in our opinion, is not sufficient to show that such name is not a corporate name.

In answer to your second question, you are advised that we have no penalty prescribed by statute for the violation of that part of section 3910 which prohibits a private bank from using a corporate name. Section 4014, of the chapter relating to the regulation of banking corporations, provides penalties for the violation of any law now in existence relating to banks, but the next section, section 4015, expressly states that the provisions of this act shall apply only to banking corporations organized under the laws of this state, and as a private bank is not a "corporation organized under the laws of this state," in our opinion the penalties provided in section 4014 do not apply to private banks.

The question then arises as to whether or not an injunction would lie to restrain a private bank from doing business under a corporate name. High on Injunctions (4th Ed.), section 20, says that equity "will not interfere for the prevention of an illegal act merely because it is illegal. And in the absence of any injury to property rights it will not lend its aid by injunction to restrain the violation of public or penal statutes, or the commission of immoral and illegal acts."

From the authorities cited by Mr. High, in support of the above text, it is apparent that in order to enjoin a private bank from using a corporate name, that the party applying for the injunction must prove that such use of the name by the private bank injures property rights. It might be that a state bank, duly incorporated and doing business under a corporate name, could show that the use of the corporate name by the private banker injured its property rights. If so, such incorporated bank would be in a better position to secure the injunction than would the state of Montana. It is doubtful whether the state is in position to maintain such an action even if it could show an injury of the property rights of some incorporation of the state.

The next legislature should enact some additional legislation to cover the defects existing in the present statute.

Yours very truly,

ALBERT J. GALEN,

Attorney General.