

**Certified Checks, Return of to Drawer After Cancellation.  
Certified Checks, Duty of Bank to Return to Drawer After  
Cancellation.**

A certified check is an obligation of the drawer thereof calling upon the drawee to pay the funds in its hands to the credit of the drawer, and the certification of such check shows that the bank holds funds with which to meet the drawer's obligation.

As it is the custom of banks to return the ordinary check which passes through its hands in the course of business, the same course should be pursued with respect to certified checks.

Helena, Montana, November 25, 1910.

Hon. C. E. Kumpe,  
State Examiner,  
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of November 7th, together with supplemental advice concerning the same with regard to the liability of a bank to return a cancelled check to the drawer thereof, after payment, the same having been certified by the bank. The negotiable instrument law of this state does not cover the situation which you suggest, nor is there any statute which I am able to find governing

the question submitted. We must, therefore, treat it with consideration due the general principles of law and commercial usage. The check is in the first place an obligation of the drawer calling upon the drawee to pay funds in its hands which may be to the credit of the drawer. The certification is not an absolute assumption on the part of the bank of the obligations of the check, but it is merely a certificate to the effect that the bank holds funds with which to meet the original drawer's obligation. In the ordinary course of business I take it that the funds of the drawer in the hands of the bank would upon certification be segregated so that an amount sufficient to meet the check upon presentation would be immediately charged off against the account of the drawer and held by the bank for the purpose of making payment on presentation of the certified check. This amounts to a payment by the drawer out of his funds in the hands of the bank into a trust fund held by the bank for the purpose of finally meeting the obligations of the check. It seems to me that the custom of banks in returning the ordinary check which passes through their hands in the course of business should be followed with respect to certified checks, with this provision, however, the records of the bank should be kept in condition to permit examining officers to check the accounts of customers for whom the bank has certified checks, and to accomplish this the bank should upon delivery of the paid certified check demand a receipt from the drawer showing payment of the check and delivery of the cancelled voucher to the drawer.

You are therefore advised that in my opinion the courts would sustain an action looking to the recovery of a cancelled voucher by the drawer thereof from the drawee.

Yours very truly,

ALBERT J. GALEN,

Attorney General.

Enclosure.