

**Banks, Private, Character of Approved Assets Before Accepting Deposits. Assets of Private Banks, Character Of.**

Under the provisions of Sec. 2, Chap. 3, Session Laws of 1911, the property or assets required by this section must not be exempt from execution, and be actually owned within the state of Montana, and such assets must be approved by the state examiner. The assets may be either real or personal property, subject to approval of the state examiner.

April 20, 1911.

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

Dear Sir:

I am in receipt of your letter of April 18th, wherein you state that Mr. S. S. Nelson of Brocton, Montana is about to open a bank at that place and wishes to know whether or not property in the shape of notes or mortgages secured by North Dakota real or personal property would be accepted by you under the provisions of Section 2, of Chapter 3, of the Session Laws of the twelfth legislative assembly of the state of Montana. In reply to your request as to whether or not the property above mentioned is such property as is contemplated by Section 2 of this act, I will say:

Section 2 provides in substance that every individual or association intending to conduct the banking business contemplated by the chapter within the state of Montana shall, before receipt of any money whatsoever on deposit actually own and possess, within the state of Montana approved property or assets not exempt from execution in the amounts stated in the section which financial condition must appear and be carried on the books of such bank.

Under the wording of this section there are two conditions which must be met before the assets of th bank would comply with this section; the first is that the property or assets must not be exempt from execution and be actually owned within the state of Montana, and the second is that such assets must be approved by the state examiner. If the property in question being mortgages secured by North Dakota real or personal property is approved by you and the notes or mortgages are actually owned within the state of Montana, this would meet the requirements of the section, but you have the right to use a reasonable discretion in determining whether or not the property or assets of the bank are such property or assets as would meet the intention of the section; and in the event the property or assets are not approved by you, so long as you use a fair, reasonable discretion in the matter, the bank could not complain. For instance, the bank might own and possess bonds of a school district of the state of Maine which might be good and might not be good. It would not be your duty to ascertain the legality of the issue of the bonds or their worth, and such asset you would likely not approve. The same rule might apply with reference to the notes or mortgages in question, and you are therefore advised that you are at liberty under the wording of this section to use your own judgment and discretion in approving the assets of the bank before accepting deposits under the provisions of Section 2, of the act above referred to.

Yours very truly,

ALBERT J. GALEN,  
Attorney General.