

**Constitutional Law. Banking Law, Private, Validity Of.
Validity, Private Banking Law. Title, Chapter 111, Laws of
1911, Sufficiency Of.**

Whatever question may arise relative to the constitutionality of Chapter 111, Session Laws of 1911, said Chapter must by this office be held constitutional until the same has been passed upon by a court of competent jurisdiction.

August 19, 1911.

Hon. Fred L. Gibson,
County Attorney,
Livingston, Mont.

Dear Sir:

I am in receipt of your letter of the 8th inst., relative to Chapter 111, Session Laws of 1911. The question presented by you is whether or not the title of the act is sufficient to sustain the provisions of Section 1 thereof. The cases cited by you contain a very complete discussion of the law on this subject, and I recite those cases here for the purpose of collating them for my report, for we may have an occasion to refer to them with reference to this law.

State vs. McKinney, 29 Mont. 375.

Evers vs. Cunningham, 35 Mont. 537.

State ex rel Leyton vs. Cunningham, 39 Mont. 197.

State vs. Brown, 29 Mont. 179.

Western Ranges vs. Custer Co., 28 Mont. 278.

State vs. Courtney, 27 Mont. 378.

In State vs. Scougal (15 L. R. A. 477, 44 Am. St. 756) the Supreme Court of South Dakota appears to hold that it is not within the province of a legislature to prohibit an individual from carrying on a banking business. However, in State vs. Woodmanse (11 L. R. A. 420) the Supreme Court of South Dakota took a contrary view. This matter is also discussed, with some citations, in 5 Cyc. 433. The South Dakota case, however, as you are aware, only goes to the extent of holding that, under the constitution of that state, the legislature does not have authority to take away from the individual his common law right of conducting a banking business, but neither that decision or any other decision, that I have been able to find, holds that the legislature does not have the authority to regulate the banking business by either individuals or corporations. The question in this particular case, is one of regulation and not of prohibition insofar as

the text of the law is concerned, but the question still remains whether the title of the act is sufficiently broad to supplement the text. Whatever may be my individual views and judgment on the matter, it is not the policy of this office to hold any act of the legislature unconstitutional until it is so squarely in conflict with the provisions of the constitution as to leave no possible doubt as to its invalidity.

In this case I cannot say favorably that this act, or any part thereof, is void as being violative of constitutional provisions. I believe, however, that the legislature has authority to deal with the subject matter referred to in Section 1 of the act. Much of this act is in relation to the duties of the state examiner and that part of it is undoubtedly supported by the title, but whether a court, in case it found that Section 1 is not within the meaning of the title, would declare the whole act void, or that particular part of the act, it is impossible to say. Our supreme court has heretofore sustained part of the act, while at the same time declaring the remainder of the act unconstitutional.

Northwestern Life Ins. Co. vs. L. & C. County, 28 Mont. 484.

If this question should come up to us through the courts, of course we will have to meet it, but we will not purposely urge any one to make a test case for if there is any doubt, of the law, the same can be brought to the attention of the next legislature and opportunity given to re-enact the law with a proper title.

Very truly yours,

ALBERT J. GALEN,

Attorney General.