

**Banks and Banking Corporations. Stocks, of Banks, Ownership of. Loans Upon Bank Stock by Bank Issuing Same.**

A state bank, organized under the provisions of the laws of this state is prohibited from owning or loaning money upon its own stock, or owning or loaning money upon the stock of other incorporated companies.

January 12th, 1914.

Hon. H. S. Magraw,  
State Examiner,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 18th ultimo, requesting my opinion upon the following question:

"Is it lawful for a bank of discount and deposit, under the provisions of Sec. 3910 of the code, to make a loan upon its own stock or the stock of any other bank or incorporated company as collateral security?"

I am of the opinion that this section is a direct prohibition against the purchase by a state bank of its own stock. The reason for such a rule is that to allow a bank to do so would virtually be

consenting to a reduction of the bank's capital stock. Carried far enough it would make the bank the owner of itself, and leave its creditors without recourse against any stockholders. In other words, it would be an impairment or destruction of the capital of the bank, a thing prohibited in law. And the prohibition mentioned in Sec. 3910 extends as well to the stock of other corporations as to the bank's own stock. The reason for prohibiting the purchase of the capital stock of other corporations is that the law contemplates that the capital stock of a bank shall be used in the banking business, and not invested in industrial or other concerns.

As to the authority of a bank to hold its own stock or that of some other corporation as security, you are advised that a bank is authorized to take and hold such stock, only as security for a past debt. That is when it becomes necessary, and only when it becomes necessary to protect a lien previously made, must a bank take and hold the capital stock of other corporations, and it is to be noted that the law limits the time to which such stock, even where taken upon a past debt, may be held not less than six months.

Yours very truly,

D. M. KELLY,  
Attorney General.