

Banks, Banking Corporations, Powers of. Powers of Banks, to Hold Stock in Federal Reserve Banks. Federal Reserve Banks. Membership in by State Banks.

Banks of deposit and discount, organized under the laws of Montana, are forbidden by Section 3910 to hold stock in any other incorporated company; this bars them from becoming members of federal reserve banks. Trust deposit and security companies, not being directly forbidden by law from owning stock in other corporations, are not debarred from becoming members of federal reserve banks.

February 26th, 1914.

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

Dear Sir:

In reply to your oral request of February 25th,

"As to whether banks organized under the laws of Montana will be permitted to buy stock in and become members of a federal reserve bank, under the provisions of the federal reserve act, passed by congress December 23rd, 1913?"

Will say that the provisions of our law regarding banks and banking corporations are found in Title 2 of Part 4, Division I of the Revised Codes of Montana, and the portions of the law with which we are especially concerned in this inquiry are found in Chapters 1 and 2 of that title, dealing respectively with banks of discount and deposit, and trust deposit and security companies. We will first consider banks of discount and deposit. Banks organized under this chapter and commonly known as "state banks" are under the prohibitions of Sec. 3910 of the Revised Codes of Montana, 1907, which provides as follows:

"No bank must be the holder or purchaser of any portion of its own stock or of the capital stock of any other incorporated company unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith on security which at the time was deemed adequate to insure the payment of such debt, independent of any lien upon such stock."

Sec. 4 of Chap. 106, Session Laws of the Eleventh Legislative Assembly enlarges the powers of corporations to acquire, own, hold and deal generally in the capital stocks of other corporations. This act, however, has a proviso which specifically shows an intent not to include such corporations as state banks, this limitation of the operation of the act being expressed in the following words:

"Provided, however, that it is not intended hereby to give the right to exercise any of the powers or duties in this subdivision mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the State of Montana."

The federal reserve banking system has been established with a view to strengthening the whole banking system of the country, and state banks by the provisions of this law are allowed to become what are known as member banks of the reserve banking system; that is, they are allowed to hold stock in the reserve banks established by the government in the district in which the state bank happens to be situated, upon fulfilling certain requirements as to the minimum reserve, federal inspection, etc. It is not probable or likely that the holding of stock of a federal reserve bank by state banks would be subject to the abuses and evils which were sought to be prevented by the enactment of Sec. 3910. But the language of that section is very general and prohibits the holding by a state bank of the shares of any corporation, and the general principle of the interpretation of statutes would seem to apply. That principle has been stated by one writer to be:

"Where a statute deals with genus, and the thing which afterwards comes into existence is a species thereof, the language of the statute will generally be extended to the new species, although it was not known and could not have been contemplated by the legislature when the act was passed."

36 Cyc. 113.

I am, therefore, of the opinion that a state bank is prohibited by the terms of Sec. 3910 of the Revised Codes of Montana, 1907, from becoming a member of a federal reserve bank, for that procedure involves the purchase and holding of a portion of the capital stock of the federal reserve bank by the state bank.

Coming now to the other class of banking corporations, known as trust deposit and security companies, the provisions of law relating to this class of banking corporations are found in Sec. 3930 and Sec. 3937, as well as in Chap. 106, Session Laws of the Eleventh Legislative Assembly. Sec. 3930 is as follows:

"The board of directors of any such corporation are hereby authorized to invest the capital of said corporation, and keep the same invested, in good securities; and it is lawful for said corporation to make such investments of its capital, and the funds accumulated by its business, including money deposits, or any part thereof, in notes or bonds and mortgages on unincumbered real estate, within the state of Montana,

and also on any and all stocks or bonds of this state, or any other state or territory of the United States, or the bonds of any county, city, town or school district of this state, legally authorized to issue such bonds."

Sec. 3937 deals with the purposes for which such a corporation may be organized and is in part as follows:

"Corporations may be created under this article for any one or more of the following purposes:

"9. To buy and sell governmental, state, county, municipal and other bonds, and all kinds of negotiable, non-negotiable and commercial paper, stocks and other investment securities."

There is no place in the chapter upon trust deposit and security corporations directly forbidding the purchase and holding of stock in other incorporated companies by such corporations; the very purposes for which such companies may be formed, as expressed in Sec. 3937, above quoted, would seem to indicate that such authority was expressly given them. This conclusion is further strengthened when we consider the language of Chap. 106 of the Session Laws of the Eleventh Legislative Assembly, which was an amendment to Sec. 3808, Revised Codes of Montana, 1907, being entitled:

"An act to amend Sec. 3808, 3825 and 3826 of the Revised Codes of Montana, 1907, relating to corporations, and to authorize corporations to acquire, own, hold, mortgage, pledge and dispose of capital stock, bonds, securities or other evidences of indebtedness of other corporations."

Among the purposes for which corporations may be formed, we find banking corporations. Subdiv. 14, Sec. 3808, as amended, being as follows:

"The transaction of any banking business or a trust, deposit and security business, and the insurance and safe keeping of all kinds of personal property."

Subdiv. 32 of said Sec. 3808, as amended, is as follows:

"To purchase or otherwise acquire, own, hold, mortgage, pledge, sell, assign, transfer or otherwise dispose of shares of the capital stock of, or any bonds, securities, or other evidences of indebtedness created by, any other corporation or corporations wherever organized, with all the rights, powers and privileges of ownership thereof. Provided, however, that it is not intended hereby to give the right to exercise any of the powers or purposes in this subdivision mentioned in any case where it is forbidden so to do by any provision of the constitution or statutes of the United States of America or the State of Montana. No corporation must be formed for any other purpose than those mentioned in this section."

This last quoted section is intended to and gives the power to corporations to purchase and hold stock in other corporations wherever organized with all the rights, powers and privileges of ownership thereof, save and except where it is forbidden to do so by any provision of the constitution or statutes of the United States of

America or the State of Montana. As noted above, we find nothing in the chapters of our codes dealing with trust deposit and security companies, forbidding them to hold stock in other corporations.

I am, therefore, of the opinion that there is no prohibition in the laws of Montana against trust deposit and security companies purchasing and owning stock in a federal reserve bank.

Yours very truly,

D. M. KELLY,
Attorney General.