

Banks, Real Estate owned by. Real Estate, Owned by Banks. Authority, of Banks to Own Real Estate. Disposition of Real Estate, Owned by Bank Prior to Act March 6, 1915. Capital Stock, May Consist in Part of Real Estate.

It is not necessary that a bank acquiring real estate prior to the enactment of March 6, 1915, to dispose of the amount it holds in excess of what it might acquire under the latter Act.

Strict construction of banking act requires money capital to be paid in in cash, but the payment of the capital and the acquisition of the real estate may be simultaneous where reports made to examiner show that capital has been fully paid, and deed shows that consideration for real estate has been paid, examiner is not required to go beyond the reports to ascertain whether money was actually deposited and then immediately withdrawn to pay for the real estate.

April 10, 1915.

Hon. H. S. Magraw,
Superintendent of Banks,
Helena, Montana.

Dear Sir:

I am in receipt of your enquiry submitting the questions:

1. Is it compulsory upon banks incorporated prior to the enactment of the law approved March 6th, 1915, to dispose of real estate held by them in excess of the amount which they could legally acquire under the provisions of the latter Act?"

2. Is it necessary, under the provisions of the Bank Act, approved March 6th, 1915, for the total amount of the capital stock to be paid in in money prior to the acquisition by the bank of any real estate for the proper carrying on of its banking business?"

I.

Under the law as it existed prior to the enactment of the banking law of the last session, the only limitation with respect to the amount of real estate which a bank could own for the proper transaction of its business is included in subdivision 1, Sec. 3913, of the Revised Codes. to-wit:

1. "Such as is necessary for the proper transaction of business."

Under Sec. 21 of the Bank Act of the last session, banks are pro-

hibited from investing more than fifty per cent of the paid up capital and surplus in such real estate, but there is not any provision in the law requiring banks that have theretofore made such investment to decrease their real estate holdings, and although banks incorporated either before or subsequent to the last Act must now comply with this provision of the last Bank Act, yet banks which theretofore invested more than fifty per cent of their capital stock in real estate are not required to diminish their holdings.

This new banking act we are inclined to construe rather as a continuation of existing law than as a wholly new enactment.

Sec. 5, Revised Codes.

II.

Under a very strict construction of the language employed in Sec. 21 of the last Banking Act, it might perhaps be required that the capital stock be actually paid in in cash before any investment could be made in real estate, as nominated in subdivision 1 of that section, but the payment of the capital stock and the purchase of the real estate might be at the same moment of time and it would satisfy the provision of that law if the seller of the real estate, who was also a purchaser of shares of stock, would pay the money for shares of stock and immediately withdraw the same and substitute a deed to the property. The law, as a rule, does not require useless things to be done. When, therefore, from reports made to you, it appears that the shares of stock are fully paid and the deed shows that the consideration for the real estate has been paid there is not any obligation resting upon you, if satisfied that the transaction was legitimate, to go beyond these records to ascertain whether, in fact, the money was actually deposited and then immediately withdrawn.

Yours very truly,

D. M. KELLY,

Attorney General.