

Banks, Incorporation of. Corporation, or Banking. Superintendent of Banks, Discretionary Power of.

Where a bank was incorporated prior to the enactment of Chapter 89, Laws of 1915, but had not been authorized to do banking business prior to that time, the issuance of certificate of authority is within the discretion of the Superintendent of Banks.

July 28, 1915.

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

Dear Sir:

I am in receipt of your letter enclosing correspondence relative to the bank of Ollie, located at Ollie, Montana. It appears from the statement of facts, as disclosed by the correspondence that on September 21, 1914, the incorporators of the bank of Ollie filed articles of incorporation with the Secretary of State, in compliance with the state law relative to the incorporation of a bank of discount and deposit, under the provisions of Section 3909, and the following sections, and received from the Secretary of State on said day a certificate of incorporation. The matter, however, was not submitted to the State Bank Examiner, and no certificate of authority to commence the business of banking was ever issued to the Bank of Ollie, and nothing further appears to have been done by the bank until about November 16, 1914, when a letter was addressed to the State Examiner, Helena, Montana, by Mr. Moes, vice-president of the Farmers and Merchants State Bank at Taylor, North Dakota, in which letter reference is made to "bank charter that we are holding for the bank of Ollie," and in which the further statement is made:

"and we would like to know how soon we will have to start business there so that we will not have to lose our charter."

Further statements are contained in the letter to the effect that a suitable location had not yet been secured in said Ollie, and that the town had not been platted. In reply to this letter someone in the bank examiner's office on November 19th, addressed a letter to Mr. Moes in which it is stated:

"After filing articles of incorporation, there seems to be no special limitation as to the time when you should begin business. Your letter will be referred to Mr. Magraw on his return to the city, and if there has been any special rule on the subject, you will be notified."

Nothing further appears to have been done relative to the bank of Ollie either by the State Examiner, or by the incorporators until

June 4, 1915, when a letter was addressed to the State Examiner, Helena, Montana, by Mr. J. M. Moes from Taylor, North Dakota, in which it is said:

"We are contemplating the opening of the bank of Ollie as soon as we can get a temporary building put up, and we would like to have you send all the necessary blanks to complete the deal, so that when we get ready we can go ahead. I will notify you at as early a date as possible so that the preliminary examination can be made when we get ready to go ahead."

In reply to this, the Superintendent of Banks notified Mr. Moes by letter dated June 7, 1914, as follows:

"The latter part of May I issued a permit to do business to the Ollie State Bank of Ollie, Montana, consequently it would be impossible for me to grant a permit to another bank to do business at that point, as I consider one bank sufficient to serve that community."

On June 9, 1915, Mr. Moes was notified by wire by your office as follows:

"New bank act passed by last legislature makes your September charter invalid."

It appears also that copies of the banking act, approved March 6, 1915, were sent to Mr. Moes. The question now presented is:

Can the Superintendent of Banks, under the power and authority vested in him by the provisions of Chapter 89, Session Laws of 1915, approved March 6, 1915, legally refuse to issue a certificate of authorization permitting the bank of Ollie to carry on the banking business at Ollie, Montana?

The general incorporation law of the State, by the provisions found in Section 3892, in effect grants to a corporation one year from the date of its incorporation to commence business. If this provision has reference to banks, a point not here determined, then that bank of Ollie had one year from the 21st day of September, 1914, in which to commence the transaction of its business, unless that Section has been as to banks modified or repealed. It is also provided in Section 3 of the Revised Codes to the effect that a law is not retroactive unless expressly so declared. It is also provided in Section 5, Revised Codes, that:

"The provisions of this Code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments."

Sections 2 and 3 of Article 15 of the State Constitution, relating to the power of the legislature over corporations, are as follows:

Section 2. "No charter of incorporation shall be granted, extended, changed or amended by special law, except * * * but the legislative Assembly shall provide by general law for the organization of corporations hereafter to be created; provided that any such laws shall be subject to future repeal or alteration by the legislative assembly."

Section 3. "The legislative assembly shall have the power to alter, revoke or annul any charter of incorporation existing at the time of the adoption of this constitution, or which may be hereafter incorporated, whenever in its opinion it may be injurious to the citizens of the state."

The repealing clause found in Section 57 of said Chapter 89, Laws of 1915, is to the effect that Section 3909 to 4015:

"Both numbers inclusive of the Revised Codes of 1907, and the acts amendatory thereof, and all laws in conflict therewith are hereby repealed. Provided, however, that all corporations heretofore organized under the laws of the State of Montana, and engaged in the business of banking, as herein defined, at the time this Act goes into effect, shall be continued, etc."

By this proviso, contained in this repealing clause, two conditions are required to be met before banking corporations then in existence could continue as corporations: (1) prior organization; (2) engaged in the business of banking.

Under the provisions of said Section 3909, Revised Codes, it is in effect provided that the bank after filing its articles of incorporation, may transact business incidental and necessary preliminary to its organization, but cannot "commence the business of banking until authorization is received from the State Examiner." The bank of Ollie had never received the authorization from the State Examiner, or the Superintendent of Banks, nor had it in any manner engaged in the business of banking at the time of the enactment of said Chapter 89. Hence, it could not meet the condition required in the repealing Act of that Chapter "engaged in the business of banking." The authority and power of the state legislature over corporations created and organized under the laws of this state, is supreme. The general law of the state is the charter of the corporation, and that charter, as provided in the constitution, may by the legislature be altered or repealed at any time. The legislature by the enactment of Chapter 89, Laws of 1915, did alter the law of the state, relating to banks and banking, and these alterations were not continuations of former law; neither were they retroactive, but they took effect only from March 6, 1915, the date of the approval of the Act, and they were clearly within the power as this constitution has been construed by the Supreme Court of this state.

Lewis v. N. P. Ry. Co., 36 Mont. 207; 92 Pac. 469;

Sommerville et al. v. St. L. M. & M. Co., 46 Mont. 268; 127 Pac. 464.

The legislature having full authority to amend, alter or repeal any and all incorporation laws of the State, and to require new or additional duties of corporations, and to impose upon them new restrictions and limitations, it necessarily follows that the provisions of said Section 3892, if such provisions have reference to banking corporations, are modified or amended to meet the conditions of the later law, to-wit: Chapter 89, Laws of 1915. The case cited of Smock vs. Farmers Union State Bank, 98 Pac. 945, contains a very clear analysis of the laws of Oklahoma relating to a question similar to this. Some claim is also made that the incorporators of the bank of Ollie were misled by reason of the letter addressed to them by the clerk in the State Examin-

er's Office of November 19th, 1914. We are not able to understand how that letter could have the effect of misleading anyone, for it only called attention to the law as it then existed. It could not at least have any greater tendency to mislead than the filing of the articles of incorporation ten months before the incorporators were ready to commence business.

For the reasons above expressed, I am of the opinion that the question submitted must be answered in the affirmative, and that the superintendent of banks may now within legal discretion, exercise the power and authority conferred upon him by the provisions of said Chapter 89, Laws of 1915, in the granting or refusing of a permit to do business to the bank of Ollie.

Yours very truly,

J. B. POINDEXTER,

Attorney General.