Private Banks—Examination and Regulation of Private Banks.

The State Examiner has the power and it is his duty to examine property and assets of private banks and bankers and to either approve or disapprove the same.

October 6th, 1917.

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

Dear Sir:

RE: Examination and regulation of Private Banks by Superintendent of Banks.

I am in receipt of your letter of Sept. 19th, submitting for my opinion the following:

> 1. "The Fourteenth Legislative Assembly enacted the Bank Act found in Chapter 89 of the 1915 Session Laws, and upon careful examination of this, you will find the only section wherein 'private bank' is mentioned is in Section 2, by which private banks are excluded from coming under the above Act, with the exception as to the provisions of Section 50, which section provides for bank reserves only.
>
> "Is it possible that in the repealing of all Acts in conflict with the new Bank Act, by implication, the Act passed in 1911, governing examination of private banks, was repealed as well, leaving only in effect the section relative to bank's reserve? This, as you will see, is of insufficient importance, as by the considering of reserve without the balance of the financial statement, no definite information or conclusions can be reached.

2. "Section 2 of Chapter III, prescribes that individuals desirous of opening private banks must have approved property in varied sums as regards the cities in which they are located. Is your construction of this paragraph such as to make it mandatory that the approval be made by this department?"

In the Revised Codes of 1907 all of the provisions of our laws, theretofore enacted, with reference to banks and the banking business, were placed together in Title II, Part IV, Div. I, Civil Code, being Sections 3909 to 4015, Rev. Codes 1907.

An examination of the several chapters and sections of this title discloses that they had reference to and applied only to banking corporations, defining the purposes for and providing the manner in which such corporations could be formed, defining their powers, and providing for the regulation and control thereof, and had no reference nor application to either individuals, firms, copartnerships or unincorporated associations engaged in the banking business.

There being no law on our statute books relative to the banking business, when carried on and conducted by individuals, firms, copartnerships or unincorporated associations, in 1911 the 12th Legislative Assembly enacted a law, being Chap. III, Acts of 12th Session, providing for the examination and regulation of banks and the banking business carried on and conducted by individuals, firms, copartnerships and unincorporated associations.

After the passage and approval of Chap. III, Acts of 12th Session, we had on our statute books two sets of laws relative to banks and the banking business, one, being Title II, Part IV, Div. I of the Civil Code, Sections 3909 to 4015 Revised Codes of 1907, having reference to and relating only to banking corporations and banks and the banking business as carried on and conducted by such corporations, and the other, Chap. III, Acts of 12th Session, relating to and having application only to banks and the banking business as carried on and conducted by individuals, firms, copartnerships and unincorporated associations.

In 1915 the 14th Legislative Assembly enacted a law, Chapter 89, Acts of 14th Session, providing for the organization of banking corporations and the regulation and control of the same, etc., and repealing Title II, Part IV, Div. I of the Civil Code, being Sections 3909 to 4015 inclusive, Revised Codes 1907, and all acts amendatory thereof, and all laws in conflict with said Act.

By Section 2 of Chapter 89, Acts of 14th Session, it is made unlawful for any corporation, partnership, firm or individual to engage in or transact a banking business, except through and by means of a corporation organized for such purpose, but it is therein expressly provided that none of the provisions of said act, except Section 50 thereof, shall apply "to any person, firm or association now doing a private banking business," etc. The other sections of said act prescribe and define the different purposes for which banking corporations may be formed, the manner in which they shall be formed or organized, their powers, the manner in which they shall conduct and carry on business, and provide for their examination, regulation and control.

From the provisions of Chap. 89, Acts of 14th Session, it seems clear that it was the intention of the legislature that, after the passage and approval of said act, any individual, firm, copartnership or unincorporated association, engaged in carrying on and conducting a banking business prior to and at the time of the passage and approval of the act, should be permitted to continue to carry on and conduct such business, but that after the passage and approval of said act no individual, firm, copartnership or unincorporated association could lawfully establish a bank or banking business, but any bank or banking business thereafter established should be carried on and conducted by a corporation formed for such purpose. And likewise it seems clear from the provisions of said act, that it was the intention of the legislature that, with the exception of Section 50 of said act, the provisions of said act should only apply to corporations organized for the purpose of carrying on and conducting a banking business, both such corporations organized and carrying on such business prior to the passage and approval of said act and such corporations thereafter organized for such purpose, and that none of the provisions of said act, except the provisions of Section 50 thereof, should apply to individuals, firms, copartnerships and unincorporated associations engaged in and carrying on a banking business prior to and at the time of the passage and approval of said act. Such intention seems to be evidenced by the provision of Section 2 of said act excluding individuals, firms and associations from all of the provisions of said act, except Section 50 thereof.

While Chap. 89, Acts of 14th Session, expressly repeals Sections 3909 to 4015 inclusive, of the Revised Codes of 1907, and all acts amendatory thereof, and all acts in conflict therewith, Chap. III, Acts of 12th Session, not being specifically mentioned, if none of its provisions are in conflict with the provisions of said Chap. 89 then neither Chap. III, nor any of its provisions were repealed thereby either by implication or otherwise, and said Chap. III, and all of its provisions still remain in full force and effect.

Considering both of these acts together I fail to find any conflict in their provisions. Chapter 89, Acts of 14th Session, with the exception of Section 50, relates wholly to banking corporations and the banking business as carried on and conducted by such corporations. Section 2 of said act expressly excepting from all of the provisions of said act, except Section 50 thereof, all individuals, firms and associations engaged in carrying on and conducting a banking business prior to and at the time of the passage and approval of said act, while Chap. III, Acts of 12 Session, relates solely to individuals, firms, copartnerships and unincorporated associations who were engaged in carrying on and conducting a banking business prior to and at the time of the passage and approval of Chap. 89, Acts of 14th Session, and are still continuing to carry on and conduct such banking business.

Answering your first question, I am of the opinion that neither Chap. III, Acts of 12th Session, nor any of its provisions have been repealed by Chap. 89, Acts of 14th Session, but that the same, and the whole thereof, is in full force and effect, and that all individuals, firms, copartnerships and unincorporated associations now engaged in carrying

on and conducting a banking business, who were engaged in carrying on and conducting such business prior to and at the time of the passage and approval of Chap. 89, Acts of 14th Session, are subject to the provisions of said Chap. III, Acts of 12th Session.

Section 2 of Chap. III, Acts of 12th Session, provides that every individual, copartnership or association, intending to conduct a bank or banking business, before the receipt of any money on deposit, shall actually own and possess, within the state, approved property or assets of certain values, the amounts thereof depending upon the population of the city or town in which such bank is located. While this section requires every such individual, copartnership or association to own and possess, within the state property or assets of a certain value before receiving any money on deposit, it nowhere, in express terms, requires that such values shall be maintained at all times, yet there can be no question but what this is the fair intent and meaning of the law. but an individual, copartnership or association has no capital stock, divided into shares, which when fully paid up, represents its capital, but an individual, copartnership or associations has no capital stock, and it was evidently the intention of the legislature to require such individuals, copartnerships and associations to have and retain, at all times, property or assets of certain values in place of the capital required of such corporations.

Section 6 of said act requires the State Examiner, whenever, after a full and careful examination of the affairs of any such bank, he shall find any evidence of any impairment of the property or assets provided for in the act, to report the same to the Governor and the Attorney General, and if the Governor and Attorney General are satisfied that such impairment exists they shall order the State Examiner to notify the person or persons, copartnership or association conducting such bank to make good such impairment. This provision shows that it was not only the intention of the legislature that individuals, copartnerships and associations, intending to conduct a bank or banking business, should own and possess property or assets of a certain value, before receiving money on deposit, but that it was also the intention of the legislature that such individuals, copartnerships and associations should at all times, while conducting such business, own and possess either property or assets of such value, and such provision further shows that it was the intention of the legislature to confer the power upon and make it the duty of the State Examiner to examine such property or assets, and to either approve or disapprove the same.

Answering your second question, I am of the opinion that by Chap. III, Acts of 12 Session, power and authority is granted to, and it is made the duty of the State Examiner to examine the property and assets owned and possessed by individuals, copartnerships and associations engaged in the banking business, and to either approve or disapprove the same.

Very truly yours,

S. C. FORD,

Attorney General