

Banks and Banking—Insolvency—Receivers—Taxation.

The state can impose such taxes only upon a national bank as is authorized by federal law.

Section 5219, United States Revised Statutes, does not authorize the state to tax the furniture and fixtures of a national bank, and the fact that the bank is insolvent and in the hands of a receiver does not change the situation.

F. A. Ewald, Esq.,
County Attorney,
Great Falls, Montana.

My dear Mr. Ewald:

You have requested my opinion as to whether the furniture and fixtures of an insolvent national bank located in Cascade county are subject to taxation there.

The question of the right of a state to tax the stock and property of national banks has been repeatedly passed upon by the Supreme Court of the United States and has been before the Supreme Court of Montana in two recent cases. In the case of First National Bank v. County of Dawson, 66 Mont. 321, the Court said:

"The state would be without power to levy any tax upon shares of stock in, or upon any of the property of, national banks, were it not for the permissive legislation of Congress. (Citing cases.) This was recognized as the law in Dennis v. First National Bank, 55 Mont. 448."

In the Dennis case last cited, the Court said:

"It is settled law that a state can impose such a tax only upon a national bank as is authorized by the federal law. * * * Beyond that it cannot go. That is the measure of its authority. By its unambiguous provisions (referring to the Act of Congress) the power is confined to a taxation of the shares of stock in the names of the shareholders and to an assessment of the real estate of the bank." (Citing cases.)

The Act of Congress referred to is Section 5219, U. S. Rev. Stat., which contains no authority for the levy of any tax against the furniture or fixtures of a national bank. The fact that the bank is insolvent and in the hands of a receiver in no way enlarges the right of the state to tax its property during the existence of the receivership.

It is, therefore, my opinion that the furniture and fixtures of an insolvent national bank located in Montana are not taxable.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.