

**Banks and Banking—Building and Loan Associations—  
Deposits—Savings.**

Building and loan associations may accept deposits and issue certificates of deposit therefor under the provisions of Section 6358, Revised Codes of Montana, 1921.

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Superintendent of Banks,  
Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion whether it is legal for a building and loan association to accept money on deposit and issue certificates of deposit in the following form, to-wit:

“Name of Association.....  
....., Montana, .....192.....  
No..... This certifies that.....  
has loaned to this Association the sum of.....  
Dollars \$..... The receipt of which is hereby ac-  
knowledged. The above sum is payable to the order of  
.....in current funds.....  
months after date with interest at the rate of.....per

cent per annum upon return of this certificate properly endorsed. No interest credited after maturity. Not subject to withdrawal until maturity.

.....President. ....Secretary.”

Under Section 6358, R. C. M. 1921, a building and loan association is given certain enumerated powers, among them being the following: “To borrow money not exceeding 20 per cent of its assets, and issue its evidence of indebtedness therefor.”

Section 6043 provides:

“No person \* \* \* or corporation \* \* \* which has not received a certificate to do a banking business from the Superintendent of Banks, shall advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise, and issuing notes or certificates of deposit therefor, or shall make use of any office sign, \* \* \* or other words indicating \* \* \* that deposits are received there or payments made on check, or any other form of banking business transacted; \* \* \* nor shall any such person, \* \* \* or corporation, \* \* \* not having an established place of business in the state, solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust or investment company, or in such a way or manner as to lead the public to believe that its business is that of a bank, savings bank, trust or investment company.”

This section prohibits advertising and the using of an office sign indicating that deposits will be received or accepted but does not expressly prohibit the receiving of deposits. As said by the Court in the case of *First Nat. Bank v. County of Dawson*, 66 Mont. 321-337:

“Under the provisions of Section 6043, these associations, in common with others not authorized to do a banking business, are prohibited from advertising that they will receive or accept money or savings for deposit, investment, or otherwise, and they are prohibited from making use of any office sign at the place where their business is transacted that such place or office is the place or office of a bank or trust company, or that deposits are received there or payments made on check or any other form of banking business transacted.”

In that case the Court quoted with approval the language appearing in the case of *Mercantile National Bank v. New York*, 30 L. Ed. 893, defining the business of banking, as follows, to-wit:

“The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security;

buying and selling bills of exchange; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations.' (Mercantile National Bank v. New York, supra.)"

It has been held that the making of a loan by a building and loan association is not the exercising of banking powers. The general rule is stated in 9 C. J. 954, Section 69, as follows:

"While a building association may be authorized to receive deposits and the like, it is ultra vires, but not illegal, for an association or society to do what is practically a banking business without such authority. However, a building and loan association does not exercise banking powers when it makes a loan to a member, nor does it make a discount, within the meaning of constitutional prohibition, when it deducts a premium in advance on a loan; and, although the act of the association in receiving deposits and agreeing to pay interest thereon is ultra vires, it is liable therefor with interest only from the time when payment is demanded. The association is not estopped and there can be no recovery for money received on deposit by one of its officials, where it did not authorize the receipt of the money nor receive the benefit of it."

The issuance of the certificate above referred to in and of itself is not condemned by our statute; neither is the acceptance of a deposit prohibited. Whether or not there has been any advertising or using of an office sign, contrary to the provisions of Section 6043, I am in no position to advise.

It is, therefore, my opinion that the acceptance of a deposit and the issuance of a certificate in the form above referred to, in and of themselves are not prohibited by our statute but on the contrary seem to be expressly authorized by Section 6358.

Very truly yours,

L. A. FOOT,  
Attorney General.