

Banks and Banking—Taxation—Capital—Shares of Stock—Mortgages.

Shares of stock held by a bank in a domestic corporation owning property that has been taxed and represented by the shares of stock, as well as investments in real estate mortgages, are deductible in determining the moneyed capital of the bank, under the limitations referred to.

State Board of Equalization,
Helena, Montana.

June 8, 1925.

Gentlemen:

You have submitted to me the following question and asked my opinion thereon:

"1. Where a state bank owns stock of a domestic corporation that has already been taxed in this state, is the bank entitled to deduct the value of such stock from the moneyed capital employed to determine the assessed value of such banking institutions?"

Under section 17 of article XII of the Montana constitution, shares of stock in a corporation are exempt from taxation when the property of the corporation represented by such stocks is within the state and has been taxed. The supreme court of Montana in the recent case of East Helena State Bank vs. Rogers, state treasurer, held that in ascertaining the moneyed capital of a state bank there shall be deducted investments of the moneyed capital in tax exempt securities. As above noted, shares of stock are exempt when the property represented by the stock is in the state and has been taxed; consequently, unless the court recedes from its position taken in the East Helena bank case it must of necessity hold that in determining the moneyed capital of a state bank there shall be deducted from the moneyed capital such portion thereof as may be invested in shares of stock of a corporation holding property in this state represented by the shares of stock when such property has been taxed.

This applies, of course, only to such shares of stock as a bank is authorized to purchase under section 6053, R. C. M. 1921, and in my judgment the value thereof cannot exceed the amount of the claim held by the bank against it. Furthermore, if the corporation holds property in another state or property in this state not taxed, then only such proportion of the value of its shares of stock shall be deducted as the

ratio between its property in the state that has been taxed bears to its entire property wherever situated. In other words, only that proportion of its value shall be deducted as corresponds to or represents property in this state that has been taxed.

You have also asked:

“2. In determining the value of moneyed capital employed by a state bank, would such bank be entitled to deduct the amount invested by the bank in real estate mortgages?”

By section 2 of article XII of our constitution evidences of debt secured by mortgages of record upon real or personal property in the state of Montana may be exempt from taxation. This constitutional provision was reiterated in section 1998, R. C. M. 1921.

The answer to this question is also controlled by the decision in the East Helena bank case and unless the court recedes from the decision in that case it must hold that any part of the moneyed capital of a state bank invested in real estate mortgages must be deducted in determining its moneyed capital subject to taxation. This, of course, should be limited to such real estate as a bank may lawfully lend money on, as provided in section 6062, as amended by chapter 90, laws of 1923, and section 6039, as amended by chapter 72, laws of 1925.

Very truly yours,

L. A. FOOT,
Attorney General.