

**State Examiner—Banks and Banking—National Banks—  
—Trusts—Examinations.**

The state examiner has no authority to examine national banks but must examine their trust records when doing business in Montana.

Jay G. Larson, Esq.,  
Superintendent of Banks,  
Helena, Montana.

December 14, 1926.

My dear Mr. Larson:

You have requested my opinion whether it is the duty of your department to examine trust departments of national banks, and also the banks themselves, when they do a trust business in Montana.

Our statutes, in defining the duties of the state examiner in examining banks, are comprehensive and cover all banks. Subdivision 4 of section 210, R. C. M. 1921 makes it the duty of the state examiner "To visit once each year or oftener, without previous notice, each of the banks, banking corporations, and savings banks, building and loan associations, investment and loan companies, incorporated under the laws of this state, or doing business under any law of the state concerning corporations, and to examine into their affairs and ascertain their financial condition; to inspect and verify the value and the amount of their securities and assets, and to inquire into any violations of laws governing such banks, institutions, and building and loan associations."

Section 6071, R. C. M. 1921, as amended by chapter 84, laws of 1923, requires every bank to make call reports to the superintendent of banks.

Section 6074, R. C. M. 1921, as amended by chapter 84, laws of 1923, provides that the call reports shall be made at least three times each year and at the same time as the time designated by the comptroller of currency of the United States for reports of national banking associations.

This latter section indicates a legislative intent that the reports required by section 6071, as amended, were to be confined to state banks and not to include national banks.

In considering the question submitted by you we are met with the well settled rule of law stated in 7 C. J., page 760 as follows:

"Congress is the judge of the extent of the powers which should be conferred on national banks and has the sole power

to regulate and to control their operations; and the National Banking Act and its amendments are supreme so far as they attempt to regulate these institutions.

“As national banks are subject to the paramount authority of the United States, it follows that an attempt by a state to define their duties or to control the conduct of their affairs is absolutely void whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the federal government to discharge the duties for the performance of which they were created.”

In recognition of this general rule of law it has been held by the United States Supreme Court in *Easton vs. State*, 47 L. Ed. 452 that a state statute making it a crime for any bank to receive deposits after insolvency was invalid insofar as it attempted to control the operations of a national bank.

In speaking of this question the court in that case said:

“Undoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction. So likewise, it may declare, by special laws, certain acts to be criminal offenses when committed by officers or agents of its own banks and institutions. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.”

Congress has passed laws regulating the examination of national banks by federal examiners (Vol. 6, Fed. St. Ann., page 901) and it is my opinion that those laws and not the state laws govern the examination of national banks.

However, this rule is not applicable to trust departments of national banks doing business in this state. The federal statute (section 11 K of the Federal Reserve Act—1919 Supp. Fed. Stat. Ann., page 257) conferring trust powers on national banks contains this provision:

“National banks exercising any or all of the powers enumerated in this subsection shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this subsection. Such books and records shall be open to inspection by the State authorities to the same extent as the books and records of corporations organized under State law which exercise fiduciary powers, but nothing in this Act shall be construed as authorizing the State authorities to examine the books, records, and assets of the national bank which are not held in trust under authority of this subsection.”

It is therefore my opinion that the state examiner has authority,

and that it is his duty, to examine the books and records of a national bank containing the transaction relating to assets held in any fiduciary capacity in this state under its trust powers.

Very truly yours,

L. A. FOOT,  
Attorney General.