Banks and Banking—Loans—Powers—Superintendent of Banks.

Private bank may not hold real estate acquired by conveyance to it in satisfaction of debts previously contracted or purchased at execution sales longer than five years from the date of its acquisition unless permitted to do so by the superintendent of banks. Private banks are limited to twenty-five per centum of their assets in making loans on real estate.

A. J. Lochrie, Esq., December 7, 1929.
Superintendent of Banks,
Helena, Montana.

My dear Mr. Lochrie:

You have requested an opinion whether a private bank must comply with Section 25 of Chapter 89, Laws of 1927, which prohibits banks from holding real estate longer than five years from the date of its acquisition when it is acquired by conveyance to it in satisfaction of debts previously contracted in the course of business or is purchased by the bank at sales under judgments, decrees or mortgages held by the company unless special written permission to continue to hold said real estate is granted by the superintendent of banks.

Prior to the codification of the banking laws by said Chapter 89, Laws of 1927, the banking laws insofar as they related to incorporated banks were found in Sections 6014 to 6086 R.C.M. 1921, and the laws relating to unincorporated banks were found in Sections 6095 to 6107 of said codes. Section 6015 of said codes which related to incorporated banks specifically provided that the act should not apply to private banks except that they were to comply with Section 6069 referring to reserve requirements. It therefore appears that by its own terms the banking act as it existed at that time relating to incorporated banks should not apply to private banks except as to reserve requirements, and in State vs. Yegen, 74 Mont. 126, 238 Pac. 603, the Supreme Court of Montana appears to have concluded that insofar as private banks were concerned they were governed by Sections 6095 to 6107 of the codes which dealt specifically with unincorporated banks, and that the provisions of the code referring to incorporated banks did not apply to unincorporated banks.

Since this decision, however, Chapter 89, Laws of 1927, has been enacted and it is a general revision and codification of the laws of Montana relating to banks and banking and it covers both incorporated and unincorporated banks. Section 2 of said chapter provides "that this act shall not apply to any person, firm or association now doing a private business; provided, however, that said private banks hereinabove referred to shall come under all of the provisions of this act which may be fairly applicable thereto; * * *." This provision was

not contained in the prior law and in my opinion it extends the provisions of the act to private banks insofar as they can be said in the nature of things to fairly apply to the conduct of unincorporated banks. The object of the banking law is to regulate the business for the safety of the public dealing with the banks and if the legislature has deemed it good policy to prevent incorporated banks from holding the real estate above mentioned for a period longer than five years without special permission from the superintendent of banks, reason would seem to compel the conclusion that the safety of the public would likewise demand that this same provision should be applicable to private banks. I can see no reason to conclude that this provision of the law is not fairly applicable to private banks within the meaning of Section 2 of Chapter 89, Laws of 1927. It is true that said Section 25 of said Chapter apparently confines the restrictions to "banks organized under the provisions of this act," but this statement must be read in connection with said Chapter 2 above quoted, which makes this provision also applicable to private banks if in reason it could be said to be fairly applicable thereto. As stated above, in my opinion it is fairly applicable to private banks and I so inform you.

You further inquire if said unincorporated or private banks are subject to the provisions of Section 27 of said Chapter 89, Laws of 1927, which provides that no commercial bank shall loan in the aggregate more than twenty-five per centum of its assets on real estate loans, etc. For the reasons hereinabove stated, it is my opinion that this provision is fairly applicable to private banks in the same manner that it is applicable to incorporated banks. The legislature evidently concluded that in the banking business the safety of the public required legislation of this sort and inasmuch as the public in dealing with a private bank does so in the same manner that it does with an incorporated bank, I can see no reason why what the legislature deemed to be a reasonable safeguard for depositors dealing with an incorporated bank should not be said to be fairly applicable to the depositors dealing with unincorporated banks. It is my opinion, therefore, that unincorporated banks are subject to this provision of the law.

Very truly yours,

L. A. FOOT,
Attorney General.