

Banks and Banking—Capitalization—Existence.

A bank in existence at the time of the enactment of chapter 89, laws of 1927, which is capitalized at \$20,000, is not required to increase its capital stock to the minimum of \$25,000 provided in said act in order to continue its existence at the expiration of its charter.

Mr. G. M. Robertson,
Superintendent of Banks,
Helena, Montana.

October 29, 1931.

My dear Mr. Robertson:

You have requested an opinion as to whether a bank which is capitalized at \$20,000 and whose charter will soon expire, must, before it is permitted to continue its existence, increase its capitalization to \$25,000, the minimum prescribed by chapter 89 of the laws of 1927.

Section 6 of said chapter provides that banking corporations organized thereunder have the power of continual succession and that any bank existing at the time of the enactment of the chapter may at any time within the period limited for its duration, elect to avail itself of the right of continual succession by filing its intention to do so in the office of the county clerk and recorder of the county wherein such corporation is located, and a copy thereof with the secretary of state, and paying the legal filing fees therefor. Section 8 of said act prescribes that a commercial bank must have a capital of at least \$25,000 but said section contains the following proviso: "provided that this Act shall not require any bank in existence and doing business to increase its capital stock."

No doubt the bank which you have reference to was in existence at the time of the enactment of said chapter 89, and this being so, the effect of the above proviso is to exclude it from being required to increase its capital stock to the minimum of \$25,000 provided in said act. Such a corporation is specifically given the right to elect to avail itself of the right of continual succession without increasing its capital stock to \$25,000, the minimum prescribed in the act.

Very truly yours,

L. A. FOOT,
Attorney General.