

"The Reconstruction Finance Corporation is permitted to loan money to assist banks in the repairing of their capital where an impairment exists.

"This assistance will be needed in some cases so that banks may be permitted to join the Federal Insurance Deposit Corporation in Montana. The Reconstruction Finance Corporation is not permitted to make loans except on preferred stock, capital notes or debentures. We have always presumed that unless specifically prohibited, a state bank in Montana can do anything that is necessary to comply with or conform to any requirements of the United States government in regard to banks operating under government supervision. We would like, however, to have a direct opinion from you as to whether a state bank in Montana has a right to issue debentures such as could be used with the government in this plan of rehabilitation."

Under its general powers a bank may borrow money and become indebted unless restricted or prohibited by statute or the rules and regulations of the Superintendent of Banks. "The weight of authority is that a bank with general powers may borrow money, under an incidental and auxiliary power, not expressed, but implied from those which are expressed." (Vol. 4, Michie-Banks and Banking, p. 55, par. 45.)

Section 54, Chapter 89, Laws of 1927, has restricted the power to borrow money in excess of the bank's paid up capital and surplus, without first obtaining written authority from the Superintendent of Banks. Section 110 *id.*, restricts the borrowing of money except to meet the bank's seasonal requirements or unexpected withdrawals and practically repeats the requirements of Section 54, *supra*. The phrase "seasonal requirements or unexpected withdrawals" should be liberally construed, particularly in times of emergency.

The foregoing sections recognize the power of banks to borrow money within the restrictions named and the supervisory power of the Superintendent of Banks. The latter is given specific authority to permit borrowing in excess of paid up capital and surplus and

Opinion No. 345

**Banks and Banking—State Banks,
Power to Borrow.**

HELD: State Banks have power with approval of Superintendent of Banks to borrow for seasonal requirements or unexpected withdrawals.

September 21, 1933

You have submitted the following:

to meet seasonal requirements or unexpected withdrawals.

It is my opinion, therefore, that it is within the sound discretion of the Superintendent of Banks to authorize a bank to issue debentures such as could be used with the Government in its plan of rehabilitation of state banks. Having such power and discretion, he may, of course, impose conditions on the exercise thereof, such as prescribing that such debentures shall be subject to the liability to depositors, or in other words, that the liability to the holders of the debentures shall be secondary and that such holders shall share in the assets of the bank after the depositors are paid in full, in case of insolvency. Certainly the exercise of such power would necessarily be a protection of the depositors. This is the purpose of the Federal Act, as well as the purpose of the limitations upon borrowing as expressed in the above two sections. Borrowing of money from the Federal Government subject to such reasonable conditions which would protect the depositors would amount to no more than the repairment of the capital of the bank and the protection of the depositors.