

**Opinion No. 391****Banks and Banking—Savings Banks—  
Trust Companies—Investment  
Companies—Capital Stock of.**

HELD: Section 8 of Chapter 89, Laws of 1927, should not be construed as requiring a commercial bank which is doing a savings bank, trust or investment company business, to have \$100,000.00 capital in addition to the capital required of a commercial bank.

November 18, 1933

You have submitted for my opinion the following question: "May a state bank in Montana exercise full trust powers without having capital and surplus of a commercial bank **plus** the statutory capital of a trust company?"

Section 8, Chapter 89, Laws of 1927, after prescribing the minimum capital stock of a commercial bank according to the size of cities and towns, recites: "The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement, and shall be not less than One Hundred Thousand Dollars (\$100,000.00) nor more than Ten Million Dollars (\$10,000,000.00) \* \* \* ." While the statute is not as clear as it might be it will be noted that there are no words to the effect that when a commercial bank is organized for the purpose of carrying on the business of a savings bank, trust company or investment company, such bank must have an additional capital of not less than \$100,000. In the absence of such express restriction, or of the words showing a clear intent on the part of the legislature, we do not believe that such additional restriction upon the organization of banks in Montana should be read in. This section should be liberally construed. (Section 4 R. C. M. 1921).

The part of Section 8 above quoted was originally enacted in exactly the same language in 1915 and appeared as Section 6023 in the Revised Codes of Montana of 1921. It was re-enacted as Section 8, Chapter 89, Laws of 1927. Since its original enactment undoubtedly your department has had occasion to construe this provision and acting thereon a number of commercial banks having savings, trust and investment powers and purposes have been formed. We are advised that no construction has been placed upon this section to the effect that capital of at least \$100,000 be required in addition to the capital required of a commercial bank. In other words, this section has been construed as meaning that a commercial bank may be a savings bank, trust company or investment company, if the capital thereof is not less than \$100,000. The construction given by the highest officers in the executive department and acted upon for a long period of time should not be disregarded or overturned except for the most cogent reasons, unless clearly erroneous. The correctness of this principal was conceded by our Supreme Court in *State v. Brannon*, 86 Mont. 200, 283 Pac. 202. See also 59 C. J. 1023, Sections 608, 609; Lewis Sutherland on Statutory Construction, Second Edition, 474.

In the *Brannon* case, the court also conceded: "\* \* \* that the weight to be given to executive or departmental practice is increased when the legislature in re-enacting the law or another law in *pari materia* fails to indicate in any way its disapproval of the settled construction of the officer or department (25 R. C. L. 1025)." The construction given a statute is said to have been impliedly endorsed by the legislature by the re-enactment of the statute. (59 C. J. p. 1030 and p. 1064, Section 626.)

In view of the interpretation which has been given to this statute by the Superintendent of Banks and which has been acted upon for nearly twenty years, we do not feel justified in disturbing it nor does it appear that such construction is erroneous.