

**Opinion No. 541****Banks and Banking—Capital Structure  
—Maximum Loans.**

HELD: Chapter 16, Laws of the Extraordinary Session, 1933-34, expressly provides that money borrowed by a bank on capital notes or debentures shall be considered as part of the capital structure for the purpose of determining the maximum amount of loans.

June 1, 1934.

You have submitted the following question:

"We have recently permitted the state banks in Montana to issue so-called "capital notes" and "debentures" over long periods of time which are subordinated to the claims of common stockholders. The question has arisen whether these debentures are a part of the capital structure and thereby within the legal loan limit, or whether they are merely borrowed money. We realize, of course, that a preferred stock issue could be classed as stock but a debenture issue is not an issue in which the articles of agreement of a bank are changed and therefore we want to ascertain from your office as to the exact status of the debentures in the question of capital structure."

Chapter 16, Laws of the Extraordinary Session, 1933-34, in its title authorizes banks "to issue and negotiate capital notes or debentures and to borrow money for capital purposes, and fixing the status of such capital." The concluding sentence of Section 1 reads as follows: "The amount of money so borrowed shall be considered as capital for the purpose of determining the maximum amount of money that may be loaned by such bank, savings bank, trust company or investment company to any person, co-partnership or cor-

poration, and for the purpose of determining the maximum amount of money which such bank may borrow, and for all other purposes of bank capital as may be required by law."

In view of the express declaration of the Legislature, it is my opinion that the notes and debentures issued by banks should be considered a part of the capital structure of banks within the meaning of Section 44 of Chapter 89, Laws of 1927, limiting loans to twenty per centum (20%) of the amount of the unimpaired capital and surplus of the bank.