

**Opinion No. 311.****Banks and Banking—Trust Funds,  
Use of By the Bank.**

HELD: A Montana bank or trust company, exercising trust powers, may not legally deposit trust funds in the commercial department of the fiduciary bank or trust company by setting aside government bonds to the amount of the trust funds as security therefor.

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June 30, 1936.

Hon. Frank H. Johnson  
Superintendent of Banks  
The Capitol

You have submitted the following question:

"It has been customary for banks holding trust funds to set aside from their assets Government bonds to the amount of the trust funds which are deposited in cash awaiting investment. There has never been any action taken that I know of in this matter and I would like to get your advice as to what authority a bank has in accepting trusts to redeposit trust funds under its control in a checking account on its books."

The question, as I understand it, is whether a Montana bank or trust company, exercising trust powers, may legally deposit trust funds in the commercial department of the fiduci-

any bank or trust company by setting aside government bonds to the amount of the trust funds as security.

I find no statute in Montana authorizing such deposit and in the absence thereof it is my opinion that it may not be done. On the contrary, Section 7889, R. C. M. 1935, expressly forbids it in the following language: "A trustee may not use or deal with the trust property for his own benefit, or for any other purpose unconnected with the trust, in any manner." (See *In re Jennings Estate*, 74 Mont. 449, 241 Pac. 648; also Section 7897, Revised Codes.)

When a bank makes such deposit of trust funds in its commercial department, it, in effect, loans such funds to itself in violation of the statute. The fact that the loan is secured by government bonds is not material. A trustee cannot in this manner acquire power withheld by statute. While executors or administrators may invest trust funds, it is only after approval and authority given by the court. See Section 10306, R. C.; *In re Harper's Estate*, 98 Mont. 356, 40 Pac. (2d) 51.