Opinion No. 69

State Banks—Capitol Notes or Debentures—Shareholders.

Held: A state bank cannot issue and sell its capital notes or debentures to its shareholders under Section 6017.1, Revised Codes of Montana, 1935.

September 29, 1947

Mr. W. A. Brown
Superintendent of Banks
State Capitol Building
Helena, Montana

Dear Mr. Brown:

You have requested my opinion on the following question:

"May a State Bank issue and sell its capital notes or debentures to its shareholders under Section 6017.1, Revised Codes of Montana, 1935?"

The section referred to in your question provides:

"Notwithstanding any other provision of law any commercial bank, savings bank, trust company or investment company, now in existence or which may be hereafter formed, shall have the power to borrow money for capital purposes upon such terms and conditions as may be approved by the superintendent of banks and as may be required by the Reconstruction Finance Corporation or other agency or quasi-agency of the federal government from which the money may be borrowed, and for this purpose may issue capital notes or debentures therefore, such notes or debentures to be subordinate in right of payment to the payment in all deposits of such bank, savings bank, trust company or investment company. 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 invest-

ment company, to any person,, co-partnership or corporation, 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."

Commercial and savings banks were thereby given "the power to borrow money for **capital purposes** upon such terms and conditions as may be aprvoed by the superintendent of banks and as may be required by the **Reconstruction Finance Corporation or other agency or quasi-agency of the federal government from which the money may be borrowed,** and for **this purpose** may issue capital notes or debentures therefor. . . . "

The act declared an emergency existed, a matter of common knowledge on December 23, 1933, the approval date of the law. The plain language of the statute showed a legislative intent to meet the emergency by increasing the capital of state banks for all purposes through loans secured from federal or quasi federal agencies.

The capital of a bank is defined in Section 6014.9, Revised Codes of Montana, 1935, which provides, in part:

" . . . capital . . . that fund for which certificates of stock are issued to stockholders in case of incorporated banks. . . ."

To meet an existing emergency (declared by Section 2,Chapter 16, Laws of the Extraordinary Session of 1933) Section 6017.1 permitted state bank capital, so defined, to be supplemented by carefully restricted loans from federal or quasi federal agencies. No provision is made in Section 6017.1 for a state bank borrowing from shareholders or anyone other than a federal or quasi federal agency, and no such provision can be read into the section.

Our Supreme Court stated in State ex rel. Palagi v. Regan, 113 Mont. 343, 350, 126 Pac. (2d) 818:

"In construing a statute, its words and phrases must be given the plain and ordinary meaning (State v. Bowker, 63 Mont. 1, 205 Pac. 961), unless the context makes it apparent that a different meaning was intended (Montana Beer Retailers' Protective Ass'n. v. State Board of Equalization, 95 Mont. 30, 25 Pac. (2d) 127; State ex rel. Durland v. Board of Com'rs of Yellowstone County, 104 Mont. 21, 64 Pac. (2d) 1060); and a supposed unexpressed intent in enacting the statute cannot override the clear import of the language employed. (Equitable Life Assur. Society v. Hart, 55 Mont. 76, 173 Pac. 1062; State ex rel. Peck v. Anderson, supra; Standard Oil Co. v. Idaho Community Oil Co., 95 Mont. 412, 27 Pac. (2d) 173.)

"Courts must first resort to the ordinary rules of grammar (Jay v. School District, 24 Mont. 219, 61 Pac. 250; State ex rel. Peck v.Anderson, supra), in the absence of a clear contrary intention disclosed by the text must give effect to the legislative intent according to those rules (Melzner v. Northern Pac. Ry. Co., 46 Mont. 162, 127 Pac. 146: State v. Centennial Brewing Co., 55 Mont. 500, 179 Pac. 296; State ex rel. Peck v. Anderson, supra), and according to the natural and most obvious import of the language, without resorting to subtle and forced construction to limit or extend their operation (Osterholm v. Boston & Montana C. C. & S. Mining Co., 40 Mont. 508, 107 Pac. 499; Lewis v. Petroleum County, 92 Mont. 263, 17 Pac. (2d) 60, 86 A.L.R. 575; State ex rel, Durland v. Board of Com'rs of Yellowstone County, supra) and must first resort to the natural significance of the words employed in the order of grammatical arrangement in which they are placed, and if, thus regarded, they embody a definite meaning involving no absurdity or contradiction, the courts may not add to nor take away from their meaning. (State e rel. Hinz v. Moody, 71 Mont. 473, 230 Pac. 575)."

It is, therefore, my opinion that a state bank cannot issue and sell its capital notes or debentures to its sharehoulders under Section 6017.1, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General