

Opinion No. 10.

**Banks and Banking—Bank Records—
Destruction of Bank Records.**

HELD: The exception contained in Section 1, Chapter 77, Laws of 1951, providing that ledger sheets showing unpaid balances of any bank may not be destroyed, refers only to those ledger sheets showing a balance remaining after the last completed transaction in the account, and not to all ledger sheets containing records of the account.

March 16, 1953.

Mr. R. E. Towle
Superintendent of Banks
State Capitol
Helena, Montana

Dear Mr. Towle:

You have asked my opinion upon the proper interpretation of Section 1, Chapter 77, Session Laws of 1951, which provides:

"Banks shall not be required to preserve or keep their records for a longer period than eleven (11) years next after the first day of January of the year following the time of the making of such records; provided, however, that the following records shall not be destroyed, viz., ledger sheets showing unpaid balances in favor of depositors of any banks. No liability shall accrue against any bank destroying any such records (except records the destruction of which is forbidden hereby) after the expiration of the time provided in this section."

The stated and obvious intent of Section 1 of Chapter 77 of the Laws of 1951 is to permit the destruction of those records which were made more than eleven years before, and contain no information of current value. In the exception, the legislature indicated an unwillingness to permit destruction of records which show current liabilities of any bank. In effect, the legislature said that it would not sanction the destruction of a record which showed a debt owing from the bank to a depositor, no matter how old. This is a necessary protection to the depositor, who may have lost his own record of his balance, and must rely on the bank's record to protect him against loss of his money.

The entire question hinges on the meaning of "unpaid balance." It has been unanimously held by the courts which have considered the question that the "balance" of an account is quite different from the account itself. It has been called "the difference between the debits and credits of an account." (*Loeb vs. Keyes*, 156 N. Y. 529, 51 N. E. 285). In the case of *McWilliams vs. Allan*, 45 Mo. 573, the court said:

"There is a broad distinction between an account and the mere balance of an account, resembling the distinction in logic between the premises of an argument and the conclusion drawn therefrom. A balance is but the conclusion or result of the debit and credit sides of an account."

This distinction was further explained in the case of *Jones v. Marrs*, 114 Tex. 62, 263 S. W., 750, where it was said:

"A 'balance' . . . means the amount of cash in the fund at a given time, whether the system of bookkeeping denominates it as credit or debit." (Emphasis supplied.)

All ledger sheets ever made on a single account would constitute a record of the account, but only the sheet showing the amount owing by the bank at the conclusion of the last transaction in the account would be a record of the balance within the meaning of the decided cases.

It is therefore my opinion that the exception contained in Section 1, Chapter 77, Laws of 1951, refers only to those ledger sheets showing a balance remaining after the last completed transaction in the account, and not to all ledger sheets containing records of the account.