Opinion No. 90.

Depositories, Banks — Building and Loan Associations, Trusts, Pre-Arranged Funeral Plans—Debtor-Creditor Relationship.

HELD: The depositories contemplated by Chapter 232, Laws of 1953, do not become trustees for those who are to receive the funeral benefits; that the normal debtor-creditor relationship exists as between the depositor and the depository; and that the depository is under no duty to see that the trust is properly administered.

August 20, 1954.

Mr. R. E. Towle
State Bank Examiner
Helena, Montana

Dear Mr. Towle:

You have requested my opinion with respect to Chapter 232, Laws of 1953. The Chapter deals with trust deposits for pre-arranged funeral plans. Under Section 2 of the Act, the party to the contract holding the money in trust shall, within thirty days after receipt thereof, deposit said money in a banking institution or invest said money in the stock of a savings or building and loan association which is insured by an instrumentality of the Federal Government. Section 1 of the Act states:

> " . . . All money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or . . . "

The question arises as to whether a duty is imposed upon the depository to see that withdrawals are made for the purpose of satisfying the trust. In order to effectuate the purposes of the act, it is mandatory that the party to the contract deposit the money with the depository within thirty days of receipt of the money. State ex rel McCabe v. District Court 106 Mont. 272, 76 Pac. (2d) 634. If the various depositories in the state refuse to accept the moneys for deposit, they in effect nullify the act.

Generally speaking, although a bank may know or be charged with notice of the trust character of funds on deposit with it, it is not necessarily liable if such funds are withdrawn by the fiduciary and used for other purposes. 7 Am. Jur. 374. The contract between the bank and the depositor is that the former will pay according to the checks of the latter, and when they are drawn in proper form by a depositor upon an account standing in his name as fiduciary, the bank is bound to presume that he is acting lawfully within the performance of his duty, in the absence of knowledge or notice to the contrary, the bank may and is bound to assume that the fiduciary will appropriate the money, when drawn, to a proper use and incurs no liability in making such payment. Leapheart v. Commercial Bank 45 S.C. 563, 23 S.E. 939; 33 L.R.A. 700. Under these circumstances, if the depository incurs no liability, he likewise incurs no added burden. It is not the business of the bank to administer the trust. New Amsterdam Casualty v. Robertson, 129 Ore. 663, 278 Pac. 963. The law imposes no such duty upon the banks as it would constitute an unreasonable burden upon them. However, the mere fact that the depository is the trustee of the funds even though the interest is known to go into the trust, and that fact is known to the depository, does not impress the trust relationship upon the bank and the depositor or upon the bank for the beneficiary. Pettybridge v. First National Bank of Livingston, 75 Mont. 173, 243 Pac. 569.

It is therefore my opinion that the depositories contemplated by Chapter 232, Laws of 1953, do not become trustees for those who are to receive the funeral benefits; that the normal debtor-creditor relationship exists as between the depositor and the depository and that the depository is under no duty to see that the trust is properly administered.