

Opinion No. 106**Banks and Banking —
Money Orders—Agency—Statutes—
Branch Banking Restrictions**

HELD: Since the proposed money order business cannot be carried on without the receipt of funds in payment of the orders purchased by the customer, for remittance to the principal of the outlying agent, at its authorized banking house, and since the acts of the agent in issuing the orders at the outlying point are the acts of the bank, the proposed operation may not lawfully be carried on in Montana, under Section 5-1028, R.C.M., 1947, which is directly applicable to state banks and, by virtue of Section 12 U.S.C. 36, which is applicable to national banks in Montana.

January 5, 1957

Mr. R. E. Towle
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

Your letter of request for an official opinion concerning banking practices is hereby acknowledged.

The following is the factual situation as indicated in your letter of request, and as disclosed by the opinion of Attorney Edmond G. Toomey, of which I am in agreement.

"X bank has placed "Personal Money Orders" with business firms in outlying areas who issue the money orders to individual purchasers and remits the amount of the purchased money order to the drawee, of X bank. A bond is supplied, protecting the banking institution against forgeries and alterations. The form of bank money order used consists of three

(3) sheets of paper joined together at the right margin, the top, or "original" being on protective paper and bearing the words "Personal Money Orders". The significance of the words "Personal Money Orders" is not explained, but I assume that they are to emphasize that the order to pay is to pay out of funds supplied by the drawer or maker of the instrument, and to his credit in the drawee bank, and to exclude the inference that the credit of the bank is involved, as, for example, in the case of a Cashier's Check. In substance, the instrument submitted is a check. Subsequent sheets are classified as "Bank's Register Copy" and "Customer's Record Copy". At a minimum the proposal would seem to involve:

(a) the designation, by proper action of the Board of Directors of the bank of an agent, i.e., as proposed, "business firms in outlying areas", for the issuance of money orders, under such limitations of authority as will effectually safeguard the bank, but, as well, such delegations of authority as will facilitate the proposed function;

(b) The acceptance by the agent of cash, or, possibly, checks, for the amount of the money order;

(c) The acceptance by the agent of the necessary fee for handling and issuance of the order;

(d) Accurate supervision of the preparation of the order, **ordinarily a negotiable instrument**, notwithstanding the apparent latitude the customer is given in that regard; and,

(e) Remittance of cash or solvent credits to the bank as principal drawee, to cover the order written upon it.

Thus, in essence, the bank must be, and in fact is, represented at the point of issuance of the order, by an agent, who is, to the extent of the powers delegated to him exercising some functions of banking, and who ostensibly personifies the

bank at such point; this inescapable fact properly gives rise to the question which you ask, i.e.:

Does the procedure violate the banking laws of Montana, as they apply to the subject of branch banking?

The answer to your inquiry must be answered in the affirmative.

With respect to National Banks, the subject of branch banking is governed by Section 5155 (c), U.S. Revised Statutes, found in 12 U.S. Code, Section 36, and which, to the extent presently pertinent, reads as follows:

"A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town, or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks."

The quoted subsection clearly indicates that if state banks are not permitted to establish branches, national banks in the same state cannot do so. See, also, in support of this conclusion, *First National Bank in St. Louis v. State of Missouri* (1924) 263 U.S. 640, 44 S. Ct. 213, 68 L. Ed. 686, cited with approval in *Lewis v. Fidelity and Deposit Co. of Maryland* (1934) 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed 1425, and *Jennings v. U.S. Fidelity and Guaranty Co.* (1935) 294 U.S. 216, 55 S. Ct. 394, 79 L. Ed. 869.

With respect to State banks in the State of Montana, the matter of the establishment of branches and of

extra-mural banking, is governed by Section 5-1028, R.C.M., 1947, (originally enacted as Section 101 of Chapter 89, Laws of 1927, and formerly codified as Section 6014.112, R.C.M., 1935), which provides:

"Branch Bank Prohibited. No bank shall maintain any branch bank, receive deposits or pay check, except over the counter of and in its own banking house. Provided, that nothing in this section shall prohibit ordinary clearing house transaction between banks."

The singular "check" and not "checks" appears in the original enactment.

Since, on the premises above, the language of the Montana statute is to govern with respect to both national banks and state banks in Montana, we must pay heed to its terms. This conclusion logically follows since the statute, quoted supra, is clear and free of ambiguity. Our Supreme Court has stated in *Siuru v. Sell et al.*, 108 Mont., 438, 444, 91 Pac. (2d) 411, 123 A.L.R. 423, the following guide to statutory construction:

" . . . We have neither the power nor the right to read the word 'originally' or language of similar import into the statute. Our office 'is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted.' (Secs. 10519 and 10520, Rev. Codes; see, also, *In re. Wilson's Estate*, 102 Mont. 178, 193, 56 Pac. (2d) 733, 105 A.L.R. 367)."

At the time this statute was adopted in 1927, as a part of the "Bank Act", the use of bank money orders in Montana, at least, was not only infrequent but, as respects most banks, little known, or, at least, unpracticed. If the Legislative Assembly had confined its prohibition to a branch bank, in the sense of a separate banking office where most of the ordinary functions of banking were carried on, it might

be possible to justify the proposal for appointment of money order agents. But the Legislature went further than the familiar concept of a branch bank, as a separate banking house or office at a site removed from the parent or principal bank. It struck at acts, i.e., the acts of receiving deposits and of paying check **"except over the counter of and in its own banking house"**. It is plain that, as respects money orders, the proposal means that the outlying agent would perform the very same acts which the officer, agent or employees would perform in the bank itself. Apparently, the Legislature determined that a bank could not carry on such specified acts as a business, or even sporadically, except within the walls of a bank or banking house, located at one point only in this State. The requirement that receipt of deposits or payment of checks must take place "over the counter of and in its own banking house", literally construed, as we believe it must be, would seem to mean that all parts and incidents of

such acts and transactions within the control of the bank, must take place within the walls and under the roof of the banking house, or at the most, on its premises, confined and limited to one point only, in Montana.

It is therefore my opinion that since the proposed money order business cannot be carried on without the receipt of funds in payment of the orders purchased by the customer, for remittance to the principal of the outlying agent, at its authorized banking house, and since the acts of the agent in issuing the orders at the outlying point are the acts of the bank, the proposed operation may not lawfully be carried on in Montana, under Section 5-1028, R.C.M., 1947, which is directly applicable to state banks and, by virtue of Section 12 U.S.C. 36, which is applicable to national banks in Montana.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.