

Opinion No. 23

BANKS AND BANKING; Morris Plan Company; loan period; limitation of—CORPORATIONS; Morris Plan Company; loan period; limitation of—Sections 5-1301 to 5-1311, Revised Codes of Montana, 1947.

Held: An association, organized and incorporated pursuant to Chapter 13, Title 5, RCM, 1947, known as a Morris Plan Company is prohibited by Section 5-1309 (b), RCM, 1947, from loaning money for a longer period than one year.

September 12, 1961

Mr. Albert E. Leuthold
Superintendent of Banks
Capitol Building
Helena, Montana

Dear Mr. Leuthold:

You have requested my opinion on the following statement of facts: Certain Morris Plan Companies, organized pursuant to Chapter 13, Title 5, Revised Codes of Montana, 1947, have been extending loans up to thirty months. Your specific question was whether in view of Section 5-1309 (b), RCM, 1947, a thirty month loan would be a violation of the law. Section 5-1309 (b) provides: "No Morris plan company shall: (b) Make any loan under the provisions of this act for a longer period than one year from the date thereof; . . ."

Regarding the powers of a corporation, the Montana Supreme Court held in *Noble v. Farmers Union Trading Co.*, 123 Mont. 518, (1950) that: "Being a mere creature of law established for special purposes a corporation receives all its powers from the Act creating it." Other jurisdictions have also held in accordance with rule laid down in Montana, regarding the powers of corporations. In *Commonwealth v. State Loan Corporation*, 176 A 516, 518 (1935), the Pennsylvania Court held in interpreting a similar statute that:

"An act of Assembly of this character should receive an interpretation favorable to the borrower, and its provisions should not be permitted to be waived by any alleged agreement of an embarrassed debtor."

This language was subsequently re-affirmed by the Pennsylvania court in *Lackawanna Thrift and Loan Corporation v. Davatchnick*, 20 A 2nd 903, (1941).

A similar situation arose in New York where a statute prohibited any bank from discounting paper at more than 6% which was due in less than sixty-three days. In *Bank of Salina v. Alford*, 31 NY 473, (1865) the New York court said:

"As to the discounting upon such a loan at a higher rate of interest, the corporation possessed no power whatever."

The California courts likewise have adopted a standard regarding the powers of corporations which parallels that of Montana. In *Kaiser Land and Fruit Co. v. Curry*, 103 Pac. 341, 346 (1909), the California Supreme Court held:

"The state has the sole power to determine upon what conditions corporations may be created and exist within its borders."

And further:

"Corporate life is a creation of the state, and can be bestowed by the state upon such conditions as it chooses."

In *Mercantile Trust Co. v. San Joaquin Agricultural Corp.*, 265 Pac. 583, 589 (1928), the California court again speaking held:

"The statute involves only the exercise of the power of the Legislature, from which alone corporations derive their right to exist and carry on business, to subject those organizations to such regulatory control as may be deemed or found by the law-making power to be necessary to the proper functioning thereof in accord with their corporate scope and purpose and also to the correction of corporate abuses, if such occur. So long as the Legislature, in exercising its right to regulate the manner in which corporations may carry out their purposes, does not impose upon them unreasonable burdens, obligations or restriction, or does not in regulating them, unfairly discriminate as between corporations of the same general class, such organizations must submit to and abide by all the conditions upon which they are authorized to prosecute the objects for which they were created."

19 CJS Corporations, Section 1123, p. 696, discussing the restrictions and limitations of a corporation, says:

"A corporation has no power to enter into contracts that are expressly prohibited by law, nor to contract in violation of charter or statutory limitation."

And at Page 720, Section 1145, *supra*, wherein the discussion is directed particularly at corporations with the power to loan, it is said:

"Likewise, when a statutory provision restricts or limits the power of a private corporation to loan money, the corporation has no authority to make a loan in the prohibited way or beyond the limit imposed.

"So also, where a corporation is expressly authorized to loan in particular ways or on particular securities, loaning in other ways is impliedly prohibited."

And at Page 721, supra:

"Where the rate of interest to be charged by a corporation on loans or discounts is limited by its charter or statute, the corporation cannot stipulate for a higher rate."

Finally, in Volume 18, Official Opinions of the Attorney General, Opinion No. 49, it was held:

". . . that a bank corporation has only such powers as may be granted by statute and its articles of agreement."

From what is said above, all corporations derive their powers from statute and charter. The charter must of course conform to state law, and a corporation cannot exceed or circumvent the statutes which authorize its creation. A corporation cannot do indirectly what it is prohibited from doing directly. A Morris Plan Company has the power to extend loans for a period of not more than one year. This is the extent of that power and there is no authority for a loan for a longer period.

It is therefore my opinion that associations organized as Morris Plan Companies are strictly prohibited by Section 5-1309 (b), RCM, 1947, from making any loan for a period in excess of one year.

Very truly yours,
FORREST H. ANDERSON
Attorney General