

BANKS AND BANKING; Branch banks prohibited—BANKS AND BANKING; Consolidation of national banks—BANKS AND BANKING; Superintendent of Banks, consent not required for consolidation of National banks—Section 5-1021, 5-1028 and 5-1124. R.C.M. 1947.

- HELD:** (1) National banks located in Montana may, with the approval of the U. S. Comptroller of the Currency, consolidate without the consent of the state superintendent of banks.
- (2) A national bank formed by consolidating two national banks may conduct a banking business in only one of the consolidated banks.

September 29, 1966

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

Dear Mr. Leuthold:

You have asked me whether or not the consolidation of two national banks is subject to your approval under section 5-1021, R.C.M. 1947.

In **State ex rel. Powell v. State Bank of Moore**, 90 Mont. 539, 555, 4 P. 2d 717 the court stated the rule that:

Statutes enacted pursuant to the police power, and certain other powers, of the state, may operate incidentally upon the general business of a national bank, such as those applying to the construction of contracts, the transfer of property, the collection of debts and liability to suit, and the relation of such banks to the community in which they do business as such banks are subject to state laws which do not run counter to the laws of Congress or the prohibitions of the federal Constitution. (cites)

Therefore, in the first instance, section 5-1021, R.C.M. 1947, should be considered to ascertain whether or not it applies to national banks.

Section 5-1021, *supra*, was originally enacted as part of the Montana Bank Act in 1927. At that time the pertinent part of the section provided; (Section 94, Chapter 89, Laws of Montana, 1927).

Any two (2) or more banks may, with the approval of the Superintendent of Banks, consolidate . . .

Section 1, Chapter 108, Laws of Montana, 1931, amended the provision to read:

Any two or more banks doing business in this state, may, with the approval of the superintendent of banks, **in the case of state banks**, consolidate . . ." (Emphasis added.)

In 1933, this office interpreted this statute as requiring national banks to obtain the approval of the state superintendent of banks in order to consolidate. 15 Ops. Atty. Gen. 196 (Op. No. 290.) However, a plain reading of the statute, the federal statute authorizing consolidation of national banks (12 U.S.C.A. §215) and the judicial decisions of our sister states interpreting similar statutes (see, e.g., **Rushton v. Michigan National Bank**, 298 Mich. 417, 299 N.W. 129, 136 ALR 458 [1941]) led me to conclude that this opinion is erroneous. A casual reading of the language of section 5-1021, as amended, indicates that the amendment was intended to make it clear that only state banks need the approval of the superintendent of banks to consolidate. Otherwise the language emphasized would have no meaning and it is a cardinal rule of statutory construction that every word employed in a statute is to be considered and none shall be held meaningless if it is possible to give effect to it. **Fletcher v. Paige**, 124 Mont. 114, 220 P. 2d 484, 19 ALR 2d 1108 (1950.) Therefore, to the extent that it is in conflict with this opinion, Opinion No. 290 of Volume 15 of the Opinions of the Attorney General is overruled.

Your next question involves the relation between consolidation and branch banking. Section 5-1124, R.C.M. 1947, which was not a part of the Bank Act of 1927, provides:

When any two or more banks located in the same county or in adjoining counties shall consolidate in accordance with the provisions of section 5-1021, the consolidated bank may, if it has a paid up capital of **seventy-five thousand dollars (\$75,000.00)** or more, upon the written consent of the superintendent of banks and under rules and regulations promulgated by him, **maintain and operate offices** in the locations of the consolidating banks. (Emphasis added.)

However, in view of section 5-1028, R.C.M. 1947, which prohibits branch banking, this section cannot be construed to permit branch banking. Otherwise it would be in conflict with section 5-1028, supra. Every effort should be made to reconcile statutes and render every provision effective before an implied repeal is declared. *State ex rel. Charrette v. District Court*, 107 Mont. 489, 86 P. 2d 750.

In order to read the sections in harmony, section 5-1124, supra, should be limited to its express language. The banking business consists of the issuance of notes, receiving deposits payable on demand, discounting commercial paper, negotiating and making loans on collateral security, buying and selling bills of exchange and dealing in negotiable securities. *First National Bank v. County of Dawson*, 66

Mont. 321, 213 Pac. 1097. It should be concluded, therefore, that the maintaining and operation of offices authorized by section 5-1124, R.C.M. 1947, refers to offices for conducting the consolidated banks' affairs other than the business of banking as defined above. Otherwise, if banking business were transacted in both locations, either location could be considered a branch bank, operated in violation of section 5-1028, R.C.M. 1947. If it is necessary to further define what business a consolidated bank could conduct at such offices, you are authorized to promulgate rules and regulations on that subject.

Also, it is apparent that the legislature did not consider section 5-1028, R.C.M. 1947, to be repealed or in any way affected by section 5-1124, R.C.M. 1947, for the legislature amended section 5-1028, *supra*, in 1963 and 1965.

As previously noted, section 5-1028, R.C.M. 1947, prohibits branch banking by state banks. Title 12 U.S.C.A. §36 prohibits branch banking in this state. See *First National Bank in Billings v. First Bank Stock Corp.* 306 F. 2d 938 (9th Cir. 1962), affirming 197 F. Supp. 417 (D.C. Mont. 1961).

Therefore, it is my opinion that national banks may consolidate in Montana without the permission of the Superintendent of Banks. However, the consolidated banks cannot engage in branch banking.

Very truly yours,

FORREST H. ANDERSON
Attorney General

FHA:CMJ:jh