

VOLUME NO. 34

Opinion No. 5

STATE EXAMINER - Examinations, payments by counties, cities, towns, and banks. Sections 5-904, 5-905, 5-908, and 82-1002, R.C.M. 1947.

- HELD:**
- 1. The amended supervision and examination fee schedule for banks contained in section 1, Chapter 256, Session Laws of 1971, is not applicable until the beginning of the 1972 calendar year.**
 - 2. The amended examination fee schedule for cities, towns and counties contained in Chapter 256, Session Laws of 1971, is not applicable until the beginning of the 1972 calendar year.**

June 9, 1971

Mr. John A. Dowdall
State Bank Examiner, Ex Officio
Superintendent of Banks
State Capitol
Helena, Montana 59601

Dear Mr. Dowdall:

In your letter of May 5, 1971, you requested my opinion on the correct procedure for billing costs of the examination of banks, counties, cities and towns. Section 5-903, Revised Codes of Montana, 1947, provides that all moneys collected under the provisions of the act shall be credited to the general fund, except as otherwise provided. Sections 5-904, 5-905, and 5-908, R.C.M. 1947, require payment of an

annual examination fee “. . . on or before the first day of July of each year . . .” in accordance with a schedule established by law. Sections 5-904 and 5-905, R.C.M. 1947, provide that the examination fees shall be paid whether or not the state examiner has made an examination within the calendar year in which the fee is payable.

You advise that the moneys due on or before July 1, 1971, have been included in the estimated revenue to the general fund for the fiscal year ending June 30, 1971.

Chapter 256, House Bill 432, Session Laws of 1971, creates a new method of billing governmental entities and banks for examinations conducted by your office. Sections 5-904 and 5-905, R.C.M. 1947, are repealed and section 82-1002, R.C.M. 1947, is amended to provide that a governmental entity is to be billed \$80.00 per day for each person engaged in the examination. Section 5-908, R.C.M. 1947, providing the method for charging banks, is also amended.

Since H.B. 432, Session Laws of 1971, does not contain a transition clause for the new billing system, there is a question as to the procedure to be followed on July 1, 1971, the effective date of the new provisions.

Chapter 256, Session Laws of 1971, amends section 5-908, R.C.M. 1947, to provide for the payment of a supervision fee for banks on or before the last day of June of each year. Since Chapter 256, Session Laws of 1971, is not effective until July 1, 1971, it is clear that the fee paid on or before July 1, 1971, is for the 1971 calendar year and that the amended payment schedule will be effective in the 1972 calendar year.

It is a well-established rule of statutory construction that statutes are not to be given a retrospective operation unless the legislature clearly intended it. See **Yurkovich v. Industrial Accident Board**, 132 Mont. 77, 314 P.2d 866 (1957), and section 12-201, R.C.M. 1947. The fees required by sections 5-904 and 5-905 clearly apply to the calendar year. Consequently, it is reasonable to conclude that the payments made on or before July 1, 1971, apply to the calendar year of 1971.

THEREFORE, IT IS MY OPINION that the provisions of Chapter 256, Session Laws of 1971, should not be given a retrospective operation. The payments made on or before July 1, 1971, apply to the 1971 calendar year, but on January 1, 1972, all examined governmental entities may be charged in accordance with Chapter 256, Session Laws of 1971.

Very truly yours,

ROBERT L. WOODAHL
Attorney General