

S. F. No. 536, An act to amend sections two (2), three (3) and twelve (12) of chapter sixty-six (66), of the Special Laws for the year one thousand eight hundred and eighty-one (1881), it being an act to reduce the law incorporating the village of Kasson, in the county of Dodge and state of Minnesota and the several acts amendatory thereto into one act, and to amend the same; and to attach certain territory for school purposes and for the establishment and regulation of the Public Schools therein.

S. F. No. 585, An act to amend an act entitled "An act to reduce the law incorporating the city of Anoka, in the county of Anoka, and state of Minnesota and the several acts amendatory thereof into one act and to amend the same," being chapter nine (9) of the Special Laws for the year one thousand eight hundred and eighty-nine (1889) approved March 18, 1889.

S. F. No. 546, An act to change the time for the holding of the annual village election of the village of Amboy, in the county of Blue Earth.

Very respectfully,

W. R. MERRIAM,  
Governor

STATE OF MINNESOTA,  
EXECUTIVE DEPARTMENT,  
St. PAUL, March 26, 1891. }

*Hon. G. S. Ives, President of the Senate:*

SIR: I beg to return without my approval, Senate File No. 54. This act seeks to amend chapter 107 of the General Laws of one thousand eight hundred and eighty-three, relative to the organization of annuity, safe deposit and trust companies, seeking to grant new privileges in the way of receiving deposits, buying and selling exchange, and apparently to allow the purchase of commercial paper, the discounting of notes, etc., and in other words, permit the companies hitherto organized for the purpose of accepting trusts, etc., to transact a general banking business in addition to other powers.

I am constrained to decline to sign this bill for the following reasons:

It appears to be the settled policy of the state in granting privileges to transact such lines of business as it has kept under its supervision, to restrict the corporate powers to the one kind of business named in the act bestowing the rights. It has provided separate laws for the government of life and fire insurance companies, of banks for the purposes of commerce, of savings banks and trust companies, steadily declining to grant to any one corporation, the franchises requisite to engage in a variety of enterprises not of the same kind or character.

The present law was created for the specific purpose of accepting trusts of various kinds, especially the care and investment of funds of widows, minor children and other persons who were unable to manage their own affairs. It was clearly the intent of the law to throw every possible safeguard known to human ingenuity, to protect the interest of those in whose behalf they were to act. A certain portion of the capital of the trust companies is deposited with the State Auditor as a guarantee of the trusts assumed. In addition, certain kinds of securities are prescribed in which all funds paid into the

hands of the companies must be invested. In order to prevent malfeasance or misappropriation of funds, a severe penalty attaches to every officer or director who borrows one dollar of the moneys belonging to any trust company.

It would seem to be against good public policy to permit trust companies to endanger their institutions by assuming the risks incident to commercial banking. It is well known that banks engaged in the operation of discounting acceptances, bills of exchange, loaning upon unsecured paper, becoming responsible for collecting notes, drafts, etc., undertake risks that are not prudent for corporations chartered for the purpose of the care of trusts, many of them of the most sacred character, to assume.

Under the proposed law, the greatest injustice would accrue to banks at present organized, in that a vast number of privileges hitherto not granted to state institutions would be given to trust companies, should this proposed amendment be placed upon the statute books. In addition to the banking privileges granted, would be the right to accept trusts, to act as sureties for contractors engaged upon public works, to become bondsmen for officers who disburse public monies, assignees in bankruptcy and numerous other equally important privileges. All of these various sources of profit would accrue to any institution transacting business under the law as it is proposed to amend it with the capital invested of simply \$250,000.

Should new companies organize under the law as it would stand with the contemplated amendment added, it would be impossible to determine by any reasonable interpretation of the section referring more specifically to the authorization of the banking privilege, to determine how much, if any, of the capital is to protect depositors, and how much to provide for the other liabilities imposed in case of insolvency. Surely no conservative man would regard it prudent for a bank doing a large commercial business to act as bondsmen for unlimited amount, assuming an unusual liability which would be a menace to every dollar deposited.

Section 2, sub-division 9 is as follows: "It shall be lawful for any such corporation which has made the deposit and received the certificate of the state auditor, as provided in section 5 of said act, to become the assignee for the benefit of creditors, or to act as receiver, or to accept any other trust which it is authorized to accept under said act, whether conferred by any person, corporation or court, without giving any bond or other security which would be otherwise necessary under the laws of this state, to enable a natural person to execute any such trust. It shall also be lawful for any such trust company to become the sole surety upon any bond or undertaking, for or on behalf of any person or persons or corporations in any suit, action or special proceeding in any court in this state where a bond or undertaking shall be necessary, under the laws of this state, or in any other matter, municipal or otherwise, where a bond or undertaking shall be required, without any other bondsmen or surety, and without justification or qualification, and without regard to whether such bond or undertaking be made in pursuance of any provision or requirement of law, or as the voluntary act of all or any of the parties thereto.

In any case where a bond or new sureties to a bond may be required by a judge of any probate court of this state, from an exec-

utor, administrator, guardian or other trustee, or by the judge of any other court of record, or by the provisions of any statutes of this state, from any person acting or to act as assignee, receiver or in any other trust capacity whatsoever, if the value of the estate or fund is so great that the judge of the court having jurisdiction of the proceedings in which such bond or new sureties shall be required, deems it expedient to require security in the full amount prescribed by law, he may direct that any securities for the payment of money belonging to the estate or fund be deposited, subject to the order of such trustee, executor, administrator, guardian assignee, receiver or other person acting in a trust capacity, countersigned by a judge of said court with any trust company duly organized and qualified to do business under this act. After such deposit has been made, said judge may fix the amount of the bond with respect to the value of the remainder only of such real estate or fund. A security thus deposited shall not be withdrawn from the custody of said trust company, and no person other than the proper officer of the trust company shall receive or collect any of the principal or interest secured thereby without special order of a judge of said court, duly entered in the records of such court; such an order can be made in favor of the trustee, appointed only where an additional bond has been given by him, or upon proof that the estate or fund has been so reduced by payments, distribution or otherwise, that the penalty of the bond originally given will be sufficient in amount to satisfy the provisions of law relating to the penalty thereof, if the security so withdrawn is also reckoned in the estate or fund."

Every company organized under this plan would endanger its deposits in acting as bondsmen, there being practically no limit to risks of this kind. Bonds of this character are frequently so large, as in the event of failure of principal, to absorb the entire capital stock of the corporation.

It is maintained that under the provisions of the proposed amendment, the trust funds are to be kept inviolate and separate, but there is nothing discernible that prohibits the trust funds from being placed in the banking department to the credit of the trust department, where it may be loaned without security to the directors or to anyone.

It is a grave question whether the law as it now stands would forbid the taking of usurious rate of interest. Certainly an unusual privilege and manifestly an advantage over other monied institutions doing an ordinary banking business. Section 8 of the act of 1883 reading as follows:

"For the faithful performance and discharge of any such trust, duty, obligation or service so imposed upon, conferred and accepted by any such corporation, it shall be entitled to ask, demand and receive such reasonable compensation therefor as the same shall be worth, or such compensation as may have been or may be fixed by the contract or agreement of the parties, as well as any and all advances necessarily paid out and expended in the discharge and performance thereof, and to charge legal interest on such advances unless otherwise agreed upon, and any compensation or commission paid or agreed to be paid for the negotiation of any loan or the execution of any trust by any such annuity, safe deposit and trust company, shall not be deemed interest within the meaning of any law of this state; nor shall any excess thereof over any rate of interest per-

mitted by the laws of this state be decreed or held in any court of law or equity to be usury."

It is claimed by some that under the law as it now stands, the trust companies have a right to accept deposits, and, inferentially, of course, to pay over such deposits.

A competent attorney who took part in framing the original bill, insists that there is no such right given, and quotes section 11, which is as follows: "No such corporation shall engage in any banking, mercantile, manufacturing or other business, except such as is hereby expressly authorized."

The question is in doubt. The further point has been raised that this bill, as it is proposed to amend it, would grant the privileges of banking, as provided in article 9, section 13, of the State Constitution, which specifically prescribes that all laws granting the privileges of banking shall be passed by a two-thirds vote of either house.

In effect, this amendment grants all rights in the way of banking, saving, of course, the privileges of issuing currency. Should the state at some future time permit banks of issue, it would be a question whether the trust companies would not have the privilege added to their corporate rights.

It is further worthy of note in this connection that subdivision three of section thirteen of article nine of the constitution, and section twenty-one of chapter thirty-three of the statutes, fix the individual liability of stockholders in banking institutions at double the amount of their holdings, while the liability of stockholders in trust companies is fixed by section nine, title 1, chapter thirty-four at nothing beyond the amount unpaid in stock subscribed for.

It can at once be seen that under the proposed law, that with a comparative small capital stock with no liability other than that assumed by the amount of stock subscribed, unusually large liabilities may be incurred.

It is urged by some, that in other states trust companies have the right to do a banking business; that the system has stood the test of time and that there is no good reason why the same powers granted to similar companies in other localities should not obtain in Minnesota. In many older states special charters have been given in the past granting privileges of doing a trust business, coupled with many other privileges, including the right to do a fire insurance, a banking business, etc. It is possible there may be general laws in some of the states authorizing commercial banking in connection with the acceptance of trusts, and other powers of a similar character. I cannot speak advisedly concerning the laws of other states, but a failure recently in New York City of the American Loan and Trust company, doing a business under the general laws authorizing trust companies, evinces the necessity of great care in throwing safeguards about all institutions who are to act as trustees for widows and orphans. The public have a right to demand of the legislature that no means be spared to protect the property of those who cannot protect themselves.

The bill as it now stands is cumbersome and uncertain in its meaning, conferring too many powers upon one corporation; at least such is my judgment, and in consequence I must decline to affix my official signature.

Yours Respectfully,

W. R. MERRIAM, Governor.