

dise subsequently to be selected and purchased, does not constitute unauthorized banking under 224.02. 27 Atty. Gen. 819.

Cashing checks for a flat fee through use of an armored motor vehicle equipped with bullet-proof glass which is driven to and parked at various places of employment on pay day does not constitute banking as defined by this section or by MacLaren v. State, 141 W 577. 36 Atty. Gen. 169.

224.03 History: 1909 c. 285; Stats. 1911 s. 2024—78m; 1923 c. 291 s. 3; Stats. 1923 s. 224.03.

On legislative power generally see notes to sec. 1, art. IV.

A company advertising that it is doing a private banking business, which it is not licensed to do, violates the statutes. 10 Atty. Gen. 169.

224.05 History: 1899 c. 230 s. 1, 2; Supl. 1906 s. 2024—81; 1923 c. 291 s. 3; Stats. 1923 s. 224.05.

If a right to priority appears on the face of a claim, and investigation confirms that right, priority may be allowed even though not specifically claimed. 15 Atty. Gen. 189.

A municipality may claim a traceable trust fund notwithstanding 224.05, Stats. 1925. 15 Atty. Gen. 279.

224.06 History: Spl. S. 1931 c. 10 s. 14; Stats. 1933 s. 224.06; 1937 c. 284 s. 3; 1943 c. 157; 1945 c. 65; 1947 c. 411 s. 11 (220.02 (5)); 1969 c. 276 s. 592 (7).

Provisions in a fidelity bond for bank employes, limiting the coverage to such losses as shall be discovered before the expiration of one year from the date of the cancellation of the bond and requiring notice of loss to be given not later than 10 days after the insured's discovery thereof, are not in violation of or in conflict with the provisions of 224.06 (1), requiring fidelity bonds for bank officers and employes. Bank of Kaukauna v. Maryland Cas. Co. 234 W 321, 291 NW 319.

224.07 History: 1949 c. 271; Stats. 1949 s. 224.07; 1955 c. 696 s. 51A.

A bank on which checks are drawn is prohibited from imposing a charge for issuing a draft in making remittance to a forwarding bank in payment of checks drawn on it sent by the forwarding bank by cash letter or otherwise presented to it for payment even if the forwarding bank agrees to pay such a charge. A bank may not impose a charge for issuing a draft in settlement of differences where checks are cleared direct between banks or through a clearing house arrangement. Where the payee of a check sends it to the drawee bank by mail for payment, with instructions to remit the proceeds by check or draft, the drawee bank may impose a charge for issuing such check or draft in cases where the instructions given by the payee to the bank were silent as to the making of such a charge as well as where the payee agreed to pay such charge. 38 Atty. Gen. 319.

224.10 History: 1955 c. 525; Stats. 1955 s. 224.10; 1961 c. 83; 1969 c. 276 s. 592 (5), (7); 1969 c. 283 s. 20.

CHAPTER 225.

Business Development Credit Corporations.

225.01 History: 1955 c. 656; Stats. 1955 s. 225.01.

225.02 History: 1955 c. 656; Stats. 1955 s. 225.02.

225.03 History: 1955 c. 656; Stats. 1955 s. 225.03.

225.04 History: 1955 c. 656; Stats. 1955 s. 225.04.

225.05 History: 1955 c. 656; Stats. 1955 s. 225.05.

225.06 History: 1955 c. 656; Stats. 1955 s. 225.06.

225.07 History: 1955 c. 656; Stats. 1955 s. 225.07.

225.08 History: 1955 c. 656; Stats. 1955 s. 225.08.

225.09 History: 1955 c. 656; Stats. 1955 s. 225.09.

CHAPTER 226.

Foreign Corporations.

226.01 History: Stats. 1929 s. 226.02 (1); 1931 c. 97 s. 3; Stats. 1931 s. 226.01.

Revisor's Note, 1931: The exception is from the first part of (2) of 226.02. Building and loan associations are excepted because they are provided for by chapter 215, Stats. See 215.41. The law is not changed. [Bill 144-S, s. 3]

A corporation need not comply with sec. 1770b, Stats. 1917, where it is either an agency of the U.S. government or not organized for profit. 7 Atty. Gen. 498.

226.025 History: 1931 c. 183 s. 3; 1931 c. 475 s. 13; Stats. 1931 s. 226.025.

226.05 History: 1927 c. 483; Stats. 1927 s. 226.045; 1931 c. 97 s. 8; Stats. 1931 s. 226.05.

226.12 History: 1854 c. 39 s. 1, 3; 1856 c. 120 s. 135; R. S. 1858 c. 148 s. 6, 8; R. S. 1878 s. 3208; Stats. 1898 s. 3208; 1923 c. 291 s. 3; Stats. 1923 s. 226.12; 1931 c. 97 s. 16.

226.13 History: 1854 c. 39 s. 2; R. S. 1858 c. 148 s. 7; R. S. 1878 s. 3209; Stats. 1898 s. 3209; 1923 c. 291 s. 3; Stats. 1923 s. 226.13; 1931 c. 97 s. 17.

226.14 History: 1923 c. 431; Stats. 1923 s. 226.14; 1931 c. 97 s. 18; 1961 c. 332; 1969 c. 71 s. 3; 1969 c. 154.

The general plan of a business or so-called Massachusetts trust, under which the trustee was to hold title to the fee and to the lease of realty in trust for the purpose of paying holders of trust certificates, and from any excess in its hands retire the certificates, and after such retirement distribute the rent, and, in case of the sale, the proceeds to the holders of ultimate title certificates is not contrary to public policy. Baker v. Stern, 194 W 233, 216 NW 147.

The authority of the securities division to require a statement upon a subscription contract that the purchasers of trust certificates may be individually liable for all debts of the organization is dependent upon the terms of the trust agreement or the instrument creating the trust. 12 Atty. Gen. 560.

Filing may not be permitted where trustees bind themselves by resolution to designate their trust as a "common law trust" when operating within the state of Wisconsin though such words are not part of the title or name of the trust. 13 Atty. Gen. 109.

The secretary of state may determine the form of the declaration of trust required under 226.14, Stats. 1931. 22 Atty. Gen. 29.

A common-law trust which was created and which sold all of its beneficial certificates prior to the enactment of 226.14 (3) must pay the full filing fee including the fee of \$1 for each \$1,000 of beneficial certificates sold. 40 Atty. Gen. 18.

The real estate investment trust. Godfrey and Bernstein, 1962 WLR 637.

CHAPTER 227.

Administrative Procedure and Review.

227.01 History: 1943 c. 375; Stats. 1943 s. 227.01; 1945 c. 511; 1947 c. 411 s. 11; 1951 c. 717; 1953 c. 277; 1955 c. 221 s. 12, 13; 1957 c. 426; 1963 c. 457; 1965 c. 295; 1969 c. 259; 1969 c. 366 s. 117 (2) (b).

Committee Note, 1955: The definition of agency has been changed from the former definition in the following respects: (a) The enumeration of certain specific agencies has been eliminated. Such enumeration is unnecessary and might cast doubt on the inclusion of agencies which are included within the general terms of the definition but which are in a different class than those which are enumerated. (b) The exclusion of the industrial commission "in matters arising out of the workmen's compensation act or the unemployment compensation act" has been transferred to 227.22 which contains other similar exceptions and has been narrowed so that it no longer excepts rule making in the fields of workmen's and unemployment compensation. (c) The phrase "having state-wide jurisdiction and authorized by statute to exercise rule-making powers or to adjudicate contested cases" has been deleted. The purpose is to make all governmental agencies at the state level of government subject to the administrative procedure act except as such agencies have been excluded by express provision. The phrase "before an agency" was added in the first line of (2) for the sake of clarity. Otherwise the definition is the same as in the former law. The definition of "rule" in (3) is substantially the same as the former definition. (4) is an expression of a legislative desire that statements of general policy and interpretations which have been specifically adopted by an agency to govern its enforcement or administration of legislation should be filed as rules. (5) contains a number of specific exceptions to the general definition of rule in (3). The purpose is to make it certain that, regardless of whether these might or might not be

within the definition, they are not included. (Bill 5-S)

The provisions for judicial review of rulings and decisions of administrative agencies should be liberally construed. The annuity and investment board is an "agency" within the meaning of 227.01, Stats. 1947, so that its rulings and determinations in administering the state employes retirement system are subject to judicial review. *Kubista v. State Annuity and Inv. Board*, 257 W 359, 43 NW (2d) 470.

The sole purpose of the legislature in adopting the uniform administrative procedure act, 227.01 et. seq., Stats. 1943, was to establish a uniform method of judicial review of official acts of administrative bodies, and there was no intent to abolish any existing right of review. *Muench v. Public Service Comm.* 261 W 492, 53 NW (2d) 514.

A regularly enacted statute, or an order of an administrative body made pursuant to statutory authority, will be presumed to be constitutional until it has been declared to be otherwise by a competent tribunal. A party attacking a statute has the burden of overcoming the presumption of constitutionality and showing that the statute is unconstitutional. *State v. Stehlek*, 262 W 642, 56 NW (2d) 514.

An announced general policy of an agency cited as a reason for rejecting an application for a license constitutes a rule; if the agency refuses the license for a reason limited to the facts presented, this is within the exception set forth in 227.01 (4), Stats. 1955. *Frankenthal v. Wisconsin R. E. Brokers' Board*, 3 W (2d) 249, 88 NW (2d) 352, 89 NW (2d) 825.

In construing the administrative procedure act, an article written by the chairman of the committee which drafted the act is entitled to great weight so far as relating to purpose of the act. *Wisconsin Valley Imp. Co. v. Public Service Comm.* 7 W (2d) 120, 95 NW (2d) 767.

In the definition of "contested case" referring to a "party" controverting the right, duty, or privilege of another party, the term "party" does not restrict the definition of "contested case" to proceedings wherein issues are contested between private parties. *Hall v. Banking Review Board*, 13 W (2d) 359, 108 NW (2d) 543.

The procedural requirements of ch. 227, relating to the hearing and determination of contested cases by administrative agencies, were not applicable to proceedings by the Milwaukee city school board on charges against a teacher, since, under 227.01, an "agency" is a board "in the state government", and a city school board is not part of the state government. (Statement in *State ex rel. Nyberg v. School Director*, 190 W 570, 575, overruled.) *State ex rel. Wasilewski v. Board of School Directors*, 14 W (2d) 243, 111 NW (2d) 198.

A letter issued to all plumbers in Wisconsin by the state board of health directed, "To Whom It May Concern", prohibiting the use of single vent double chair carrier water closet fittings, which pronouncement contained no indication that the policy was limited to a particular manufacturer and distributor to the exclusion of others, constituted a rule, since it was a statement of agency policy of general