

Opinion No. 118.**Banks and Banking—Closed Banks—
Liquidating Agent, Authority of
Superintendent of Banks
to Appoint.**

HELD: The superintendent of banks has no authority under the provision of Section 3, Chapter 197, Laws of 1937, to appoint the Federal Deposit Insurance Corporation, or their receiver, to assist him in the liquidation of a bank closed because of failure to repair capital impairment.

July 15th, 1937.

Honorable W. A. Brown
Superintendent of Banks
The Capitol

Dear Mr. Brown:

You have submitted the following facts and request for opinion:

“The Farmers State Bank of Bainville, Montana, a bank fully insured by the Federal Deposit Insurance Corporation, closed its doors on July 13, 1937. That Corporation has now requested that this office appoint them or their receiver as Liquidating Agent to handle the liquidation of the bank.

“Section 3 of Chapter 197 of the 1937 Session Laws provides that the Superintendent of Banks may appoint said Corporation Agent to assist him or act for him only in the event the bank is closed on account of the inability to meet the demands of its creditors. This particular bank did not close by reason of the inability to meet the demands of its depositors and creditors but did close by reason of its failure to repair a capital impairment and further by action of its Board of Directors.

“In your opinion would we have authority under this Section to appoint the Federal Deposit Insurance Corporation or a receiver duly appointed by them as Liquidating Agent to handle the liquidation of this bank?”

Since Section 3, Chapter 197, Laws of 1937, specifically states that the superintendent of banks may appoint

the corporation agent to assist or act for him when a banking institution is closed on account of inability to meet the demands of its creditors, and no other ground is listed in said section and, since the bank was closed for other reasons, it is my opinion that the superintendent of banks does not have authority, under this section, to appoint the Federal Deposit Insurance Corporation, or a receiver duly appointed by it, as liquidating agent, to handle the liquidation of this bank.

It is true that failure to repair capital impairment may ultimately result in inability to meet the demands of depositors but that condition has not yet arisen and the bank was not closed for that reason. In this connection we call attention to the fact that even if the bank were closed on the grounds stated in Section 3, it is entirely within the discretion of the superintendent of banks whether he will make such appointment. This section does not make it mandatory that he should do so. There may be reasons why the superintendent of banks would feel that the liquidation could be handled as well without such assistance.