

was published or given in any manner, but all of the stockholders of the bank signed waivers consenting to the holding of the meeting and waiving notice"

and have asked me to review the opinion of a former Attorney General in Volume 11, Opinions of the Attorney General, 78, holding that the stockholders cannot waive the publication of the notice required by Section 6014.21, R. C. M., 1935, which reads:

"Whenever any bank shall decide to call a meeting of the stockholders for the purpose of increasing or diminishing the amount of its capital stock, * * * it shall be the duties of the trustees or directors to publish a notice signed by at least a majority of them in a newspaper in the county, if any shall be published therein, six successive weeks, and to deposit a written or printed copy thereof in the postoffice, addressed to each stockholder at his usual place or residence at least six weeks previous to the day of meeting, specifying the object of meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, * * * ."

Whether the stockholders may waive the publication of notice provided by the above statute depends upon whether such publication is for the benefit of stockholders or for the benefit of the public and the creditors of the bank. If such publication is for the benefit of the latter, the stockholders, of course, may not waive it. They may waive the mailing of notice to themselves. (14, C. J. 498, 737, Note 5; 13 Am. Juris. 315, Section 196.)

We are unable to conclude that the publication of the notice is for the benefit of the public or the creditors of the bank for the reason that such notice merely advises that a reduction of the capital stock is proposed. If such reduction is not approved by the required number of stockholders at their meeting, such reduction will not be made. This meeting is for the stockholders only. No one else is permitted to attend or vote or to be heard thereat. It would serve no useful purpose in advising the public of the meeting which the public could not at-

Opinion No. 83.

Banks and Banking—Capital Stock— Reduction of Stock—Publication of Notice—Waiver of Stockholders.

HELD: The stockholders of a bank, in reducing the capital stock, may waive the publication of notice required by Section 6014.21, R. C. M., 1935.

June 20, 1939.

Hon. W. A. Brown
Superintendent of Banks
The Capitol

Dear Mr. Brown:

You submit the following:

"A state bank in Montana has just recently held a meeting and adopted a resolution reducing its capital stock. No notice of this meeting

tend, participate in or do anything in furthering or hindering the proposed reduction. After all, if the public is concerned at all, it would only be interested in knowing about the reduction after it has been made but assuming that the public should be so interested, the notice of the stockholders' meeting to consider the question does not give any information of a change. If it had been intended that the public or the creditors of the bank should be advised of a reduction, it is reasonable to suppose that the notice to the public would give that information after it became a fact.

An examination of the history of the Banking Act discloses that by an act approved March 6, 1889, the publication of notice of reduction of bank capital was required in the following language:

"Notice of such reduction shall be given by publication for at least sixty days in some newspaper of general circulation, printed and published in the county wherein such corporation is doing business."

By Chapter 89, Laws of 1915, this provision was repealed and has never been re-enacted. No doubt the legislature thought that the quarter-annually published statements of the bank capital, assets and liabilities were sufficient notice to the public of any change in the bank's capital structure and financial condition.

The opinion of the former Attorney General above referred to is based upon a general statement contained in 14 C. J., 498. Upon examination we find that the textwriter does not cite any cases holding that the publication of such notice is for the benefit of the public or the creditors of the bank. We have examined other authorities:

Mitchell v. Banking Corporation of Montana, 83 Mont. 581, 603, 273 Pac. 1055;

Thompson v. Reno Savings Bank et al., (Nev.), 7 Pac. 68, 70, 13 Am. Juris. 315;

5 Thompson on Corporations, (7th ed.) 843, Section 289;

Mitchie on Banks and Banking, Vol. 2, p. 10, Section 7;

and others. None of them cite any court decision holding to the contrary.

Since a statement of a textwriter can have force only to the extent that it is supported by the decisions of the courts, the general statements found therein must be considered to have application only to the facts of the cases considered. We have been unable to find any court holding that the publication of such notice is for the benefit of the public or the creditors of the bank.

We must therefore conclude that the publication of the notice of meeting of the stockholders for the purpose of diminishing the amount of the capital stock of a bank was intended for the stockholders of the bank and that such publication may be waived by all the stockholders.