

**Banks, Surplus Fund Of Not to Be Diminished or Impaired.**

Banks should not be permitted to impair or diminish their surplus or reserve fund by charging off bad paper against the same.

Oct. 4, 1912.

Hon. Fred E. Hoss,  
State Examiner,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 2nd inst., submitting the question as to whether outstanding accounts or real estate owned by banks may be listed and carried as a part of the "surplus fund," as specified in Chap. 112, Session Laws of 1909, or as a part of the reserve fund, as provided for in Sec. 4010 of the Revised Codes. From examination of these laws, I am convinced that the provisions of both Sec. 4010 and of said Chap. 112, have reference to actual cash or money on hand, and not outstanding accounts, or to any other class or specie of property whatsoever. It therefore necessarily follows from this view of the law that neither the reserve fund nor the surplus fund can legally be diminished by charging thereto bad accounts, for this would be the same as taking money out of these funds to make good the loss sustained by reason of bad paper.

The law requires a certain amount to be kept as reserve fund or surplus fund. This, as I understand it, should be available money on hand, not subject to be diminished by reason of other property owned by the bank, or by reason of bad accounts. Bad paper cannot be computed in making up the reserve fund, nor can a bank be permitted to offset its bad paper against its surplus fund so as to maintain the capital required by law.

Yours very truly,  
ALBERT J. GALEN,  
Attorney General.