

Banks, Assessment to Restore Impaired Capital. Assessments, On Bank Stock to Restore Capital.

The bank has authority under the direction of the State Examiner to levy assessments upon stock to make good the impairment of capital, but in the event that such assessments are not paid, the stock cannot be sold under the general corporation law.

February 25, 1911.

Hon. C. E. Kumpe,
State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of February 1st, 1911, wherein you submit two questions for my official opinion. The questions are as follows:

“Can a bank force from a stockholder payment of an assessment made by the state examiner to make good the impairment of capital stock?”

“In the event that said assessment is not paid within the time specified, can the directors of the bank sell the stock as provided in the general corporation law?”

The only authority the state examiner has in the matter of assessments is provided for in Section 4004, which provides in substance that if the state examiner shall find evidences of impairment or insolvency, he shall submit a statement of the bank's condition to the governor and the attorney general, and if these officers are satisfied that such impairment or insolvency exists, the attorney general shall thereupon give written notice to each officer and stockholder with a demand that they make good such impairment or insolvency within three months. The only interest which the state or the state examiner has in the matter, is to see that the impairment is remedied, and when this is done the responsibility of the state officers ceases.

Section 3867 of the Revised Codes provides for the levying of assessments upon capital stock, and the following sections provide the manner of giving notice, which under Section 3871 is by publication. The same article in Section 3875 provides for the publication of a delinquent notice. The banking law does not provide for either of these publications. The chapters of the code relating to banks gener-

ally cover the banking systems and do not depend on the aid of general corporation laws, and even though Section 4004 provides for the levying of an assessment to make good the impairment of capital, it does not require that each stockholder should contribute to the deficiency, but the only object of it is, to put the bank upon a legal basis. If the impairment is not made good in some manner, the same section provides that the attorney general shall apply for the appointment of a receiver—if it is made good in whatever manner the state officers have no authority to proceed further.

You are therefore advised in answer to your first question, that the bank may force the collection of assessment levied to make good the impairment of capital, but in my opinion the only remedy is by civil action and a recovery upon judgment.

In reply to your second question, you are advised, that there is no authority for the sale of the stock by the bank under the general corporation law, but that if a judgment is secured an execution against the stock would be good, and if sold under the execution the stock could be bought by the bank or any other person, and the amount of the assessment collected in this way.

Yours very truly,

ALBERT J. GALEN,
Attorney General.