

**Banks, Surplus Fund of. Surplus Fund of Banks, Bad Debts
May Be Charged Against.**

A bank incorporated under the laws of Montana may charge its bad debts to its surplus fund after all other earnings of the bank have been employed for that purpose. This may be done without getting permission from the state bank examiner.

April 18th, 1913.

Hon. H. S. McGraw,
State Examiner,
Helena, Montana.

Dear Sir:

I beg to acknowledge receipt of your recent communication to the following effect:

“We submit herewith the following questions, upon which we respectfully request your legal opinion:

“Has a bank, incorporated under the laws of Montana, the legal right to charge any bad debts to its surplus fund after

all other earnings of the bank have been employed for that purpose, or is it necessary to make an assessment on the individual stockholders of such bank?

"If it is legal for a state bank to charge bad debts to its surplus fund, is it not necessary that such bank report the necessity of such action to and get permission from the state bank examiner?"

"As to the creation of a surplus fund, we refer you to Chapter 112 of the Session Laws of 1909."

In reply thereto, I beg to advise that in my opinion the purpose of creating the surplus fund, provided for in Chapter 112 of the Session Laws of 1909, is to provide a fund against which bad debts may be charged, so that at all times the capital may be kept unimpaired. If it were not for having such a fund on hand, whenever there was a loss through improvident loaning, an assessment would necessarily be levied upon the stockholders or the capital would thereby become impaired. It is for the purpose of avoiding this contingency that the surplus fund has been created. In *Pullan v. The Corporation Commission*, the Supreme Court of North Carolina stated:

"The primary purpose of a bank surplus is the accumulation of a sum against which bad debts may be charged, so that at all times the capital may be kept unimpaired. This is required by the national banking act."

Pullan v. The Corporation Commission, 68 S. W. 155 at 161.
152 North Carolina, 548.

In reaching this conclusion I have not overlooked the opinion of Mr. Galen upon the same question, addressed to Hon. Fred E. Hoss, October 4th, 1912 (Vol. 4, Opinions of Attorney General, 1910-12, p. 521), but I cannot agree in the conclusion there reached. I find no provision in the law requiring a bank to obtain permission from the state bank examiner before charging bad debts to the surplus fund. In the absence of any such provision in the statute, I am of the opinion that the charge may be made without permission from the state bank examiner.

You are, therefore, advised that a bank incorporated under the laws of Montana may charge its bad debts to its surplus fund, after all other earnings of the bank have been employed for that purpose, and that this may be done without getting permission from the state bank examiner.

Very truly yours,

D. M. KELLY,
Attorney General.