

Banks and Banking—Insolvent Banks—Bank Examiner—Receiver—Reports—Expenses.

The Superintendent of Banks may call for a report from a receiver of an insolvent bank; also he may make an examination of the affairs of such banks; if the receiver refuses to make such report or to allow such examination the Superintendent of Banks has authority to file proceedings for his removal.

Actual expenses and per diem as fixed by the law for time actually consumed in making such examination are a proper charge against the insolvent bank.

L. Q. Skelton, Esq.,
Superintendent of Banks,
Helena, Montana.

My dear Mr. Skelton:

You have requested my opinion relative to your authority to examine the affairs of insolvent banks in the hands of receivers, and whether the expense thereof is a proper charge against the trust.

Section 6079, Revised Codes of 1921, provides as follows:

“Receivers of all insolvent banks shall make reports to the Superintendent of Banks in the same manner as is required of other banks, at least five times each year when called upon to do so, or at any time when requested by the Superintendent of Banks. Any receiver who refuses to submit the affairs of such bank to an examination by the Superintendent of Banks, or his assistants, or fails to make a report when called for by said officers, or who violates any of the provisions of law relating to examination of banks, shall be subject to removal.”

While a receiver is an officer of the Court which appointed him, there can be no doubt of the intention of the Legislature when the above section was enacted. It is clear that it was intended that the Superintendent of Banks should retain supervisory control over the affairs of the bank while it is being liquidated by the receiver.

It is, therefore, my opinion that the Superintendent of Banks may call for a report from a receiver of an insolvent bank at any time that he, in the exercise of his legal discretion, believes that such report is necessary; also that he may make an examination of the affairs of such banks whenever he believes it proper, and, if the receiver refuses to make such report or refuses to permit such examination, the Superintendent of Banks has the authority to file proceedings for the removal of such receiver.

Section 6080, Revised Codes of 1921, reads as follows:

“The expenses of traveling, hotel bills, and time actually spent by the office of the Superintendent of Banks in performance of the duties imposed by Section 6079, shall be paid in full by the bank to the State Treasurer, and by him credited to the state banking fund.”

An attempt was made to amend this section by Chapter 88, Laws of 1923, but since the section proposed to be amended was not mentioned in the title of the Act, it has been held unconstitutional by this office.

Under this section, the Superintendent of Banks, if, in his opinion, it becomes necessary to make an examination of the affairs of a bank in the hands of a receiver, should file an itemized claim with the receiver for the actual expense of his office in traveling, hotel bills and time actually spent on the duty, and such claim should be allowed by the receiver and paid as an item of expense in liquidating the insolvent bank.

Such an examination, under Section 6109 b, of Chapter 90, Laws of 1923, becomes a “special examination” and the per diem fee to be charged to such bank for the examination is fixed by Section 2 of Chapter 93, Laws of 1923, at \$15.00 per day for each examiner for the time actually consumed in making the examination.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.