

**Banks—Insolvency—Receiver.**

Section 6109d of Chapter 90, Laws of 1923, construed as being applicable to a bank in the hands of the State Banking Department before the appointment of a receiver.

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

My dear Mr. Skelton:

You have submitted to this office for my opinion the following questions:

"1. May the provisions of Section 6109d be invoked after the bank is in the hands of the department and before appointment of receiver, for the purpose of reinstating to solvency?

"2. May the provisions of Section 6109d be invoked after the bank is in the hands of a receiver?"

Answering your first question, I know of no reason why the provisions of Section 6109d may not be invoked during the time a bank is in the hands of the department and before appointment of a receiver. During such time the bank is in the hands of the department because, while there may be some impairment of capital or evidence of insolvency, it has not yet been determined that the capital is so impaired or that the insolvency exists to such an extent that it is necessary for a receiver to be appointed, and the impairment may be made good or the bank restored to solvency in the manner provided by Section 6109d. Your first question is, therefore, answered in the affirmative.

Under Section 6079 a receiver can be appointed only when the Governor shall determine, from the statement of the Superintendent of Banks, that it is necessary for the appointment of such receiver. Immediately upon the appointment of a receiver the bank passes from the control of the department to that of the court, the receiver acting, not as an officer of the department, but as an officer of the court, and the department has no control or authority whatever over the receiver or over the affairs or business of the bank, other than to require the reports to be made in the same manner as solvent banks are required to make reports. It is, therefore, my opinion that the provisions of Section 6109d may not be invoked after the bank is in the hands of a receiver.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.