

Banks and Banking—Assessment—Reports—Fees—Examination.

1. The banking department may levy an assessment against the stockholders of a bank in voluntary liquidation in the event of impairment of capital.

2. A bank in voluntary liquidation is not required to publish the regular reports of its condition in the same manner as a functioning bank.

3. A bank in voluntary liquidation need not pay the fees prescribed by statute to be paid by functioning banks.

4. The examination of a bank in voluntary liquidation is a special examination within the meaning of section 6109b, chapter 90, laws of 1923.

J. G. Larson, Esq.,
Superintendent of Banks,
Helena, Montana.

November 3, 1925.

My dear Mr. Larson:

You have requested my opinion whether banks in voluntary liquidation under the provisions of section 6109e of chapter 90, laws of 1923, are subject to the supervision of the banking department in the same manner as functioning banks.

The section referred to provides that a bank may go into voluntary liquidation and be closed by a vote of the stockholders. It further provides for the making of reports by such a bank to the superintendent of banks at least once each sixty days and gives the superintendent power to examine into the affairs of a bank so liquidated and upon the order of the governor and attorney general to take possession of the property of the bank and complete the liquidation thereof whenever he finds that the interests of the depositors and creditors are not being properly protected.

It is my opinion that when a bank is in voluntary liquidation under the above section it has "closed" and "ceased to transact business." Under such conditions I do not think that the bank should be held to a further compliance with the laws regulating the affairs of a going, functioning, solvent banking concern. It is my opinion that you should regard such a bank as closed for all purposes incident to the transaction of the ordinary business of a banking concern and that you should not require it to comply with the laws ordinarily applicable to such operating banks, save and except that you may still continue to exercise control over the affairs of the bank and to that end may require the bank to comply with the laws necessary to enable you to intelligently supervise the operation of said bank. The statute gives you ample authority to examine the condition of the bank and under the conditions above indicated to take over its affairs and complete its liquidation whenever the rights of creditors and depositors are not being protected.

Your specific inquiries are, therefore, answered as follows:

1. The banking department may levy an assessment against stockholders in a bank in voluntary liquidation in the event of impairment of capital. The fact that the bank has gone into voluntary liquidation does not suspend the power of your department to exercise the authority conferred upon you by law to require banks to make good a capital impairment.

2. You cannot require a bank in voluntary liquidation to publish a report of its condition the same as a functioning bank. The reports provided for by section 6109e, supra, supercede the making of the regular reports.

3. A bank in voluntary liquidation need not pay the fees prescribed by statute to be paid by functioning banks.

4. You have orally requested my opinion as to whether an examination of a bank in voluntary liquidation is a regular or special examination.

Section 6109b of chapter 90, laws of 1923, provides that any examination made by the superintendent of banks, otherwise than in the ordinary routine of the department and because in his opinion the condition of the bank requires such examination, shall be deemed a special examination.

It is my opinion that an examination of a bank in voluntary liquidation under section 6109e is a special examination within the provisions of the above section.

Very truly yours,

L. A. FOOT,
Attorney General.