

**Banks and Banking — Voluntary Liquidation — Claims —
Notice—Creditors—Publication—Stockholders.**

Notice to creditors must be published by a bank in voluntary liquidation before rights of creditors can be prejudiced, and when claims are outstanding sufficient funds to pay the same must be paid to the superintendent of banks as provided by section 137, chapter 89, laws of 1927.

June 8, 1928.

A. J. Lochrie, Esq.,
Superintendent of Banks,
Helena, Montana.

My dear Mr. Lochrie:

You have submitted to me the following statement of facts:

“A bank in voluntary liquidation proposes to pay off all depositors who have made claims against the bank and to turn the

remaining assets over to stockholders who have been subrogated in the claims against the bank. However, they find that at the time of suspension the bank had two of what they called suspense accounts, which consist of a number of small accounts running from a few cents to four, five and six dollars, aggregating in excess of \$2,000.00 for which claims have not been filed against the bank. No publication notice was ever given that claims should be presented within a given time or forever barred, but we are advised that personal notice was mailed to each creditor of the bank by the liquidating officer."

You desire my opinion whether notice to creditors may be published at this time requiring the presentation of claims.

Section 6109e of chapter 90 of the laws of 1923 relating to the voluntary liquidation of banks contains this clause:

"Such bank shall immediately publish notice in a newspaper published in the place in which such bank is located, and if none is there published, then in the place nearest thereto, that it is closing up its affairs and notifying creditors to present their claims against the bank for payment. Such notice shall be published for four consecutive weeks."

You state that this notice was not published. It is my opinion that this notice must be published before creditors can be prejudiced in their rights. It seems to me that after this is done the proceedings outlined in section 137 of chapter 89 of the laws of 1927 should by analogy be adopted and followed. In other words, I think that after this notice is published an amount of money sufficient to pay the claims of unpaid creditors in the suspense account should be turned over to the state treasurer as therein provided, and that the stockholders of the bank have no right thereto.

Very truly yours,

L. A. FOOT,
Attorney General.