

Superintendent of Banks—Clerk of District Court—Filing Fee.

The superintendent of banks, or his liquidating agent, liquidating an insolvent state bank, is not required to pay to the clerk of the district court a filing fee for filing a petition for the purpose of securing the order of the court in connection with the liquidation of the bank.

Mr. G. M. Robertson,
Superintendent of Banks,
Helena, Montana.

December 8, 1931.

My dear Mr. Robertson:

You have requested the opinion of this office on the question of whether a filing fee is required to be paid to the clerk of the district court when a petition is filed by you as superintendent of banks or by a liquidating agent appointed by you, for the purpose of securing the orders of the court in connection with your administration of the laws relating to the liquidation of insolvent banks where such liquidation is being done by you as superintendent of banks; also whether under the same circumstances you are required to pay to the clerk a fee for filing the order obtained upon such petition. The question appears to arise in a case where a petition was filed for an order authorizing the signing of waivers so that federal feed and seed loans could be obtained, and an order was made by the court granting such authority.

Chapter 89 of the laws of 1927 authorizes the superintendent of banks to liquidate the affairs of an insolvent bank and for that purpose may appoint liquidating agents to assist him in the performance of his duties. The superintendent is authorized to institute in his own name, as superintendent, or in the name of the bank, such suits, actions or other legal proceedings as he deems expedient, and he may make application to the district court or the judge thereof in chambers for orders in connection with the discharge of his trust.

In the discharge of his duties relating to the liquidation of insolvent banks the state superintendent of banks acts in his official capacity. Section 4893, R.C.M. 1921, reads as follows:

"No fees must be charged the state, or any county, or any subdivision thereof, or any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees."

It is my opinion that under the above section neither the superintendent of banks nor any agent acting for him is required to pay any fees to the clerk of the district court for filing petitions, or orders obtained from the court, in connection with the liquidation of an insolvent bank by him. He is a public officer acting for the state in the discharge of his duties and under said section the services of filing the petitions and orders must be rendered without the payment of fees.

Very truly yours,

L. A. FOOT,
Attorney General.