Banks and Banking—Unincorporated Banks—Liquidation —Superintendent of Banks.

Superintendent of banks has authority to liquidate an unincorporated bank which has voluntarily closed its doors and placed its affairs in his hands.

Mr. G. M. Robertson, July 7, 1932.
Superintendent of Banks,
Helena, Montana.

My dear Mr. Robertson:

I have you request for an opinion. You inquire if under the banking laws of this state you have the authority to liquidate the affairs of an unincorporated bank which has closed its doors and turned its assets and affairs over to the banking department.

In 1927 the legislature enacted chapter 89 of the session laws of that year, which chapter revised and codified the banking laws of Montana and repealed the previous statutes upon the subject except that those sections having to do with voluntary liquidation of banks and the appointment of receivers for state banks were continued in effect for the purpose of completing the liquidation of all such banks which were at the time of the enactment of said chapter either in voluntary liquidation or in the hands of receivers, and also preserving the liability of stockholders of all such banks in liquidation at the time the chapter was enacted.

Section 123 of said chapter 89 provides that any bank may place its affairs and assets under the control and in the possession of the superintendent, and section 127 provides that upon taking the assets and business of any bank into his possession the superintendent shall proceed to liquidate the affairs thereof.

Section 121 enumerates the instances in which the superintendent may liquidate a bank and one of these is where a bank goes into the superintendent's hands voluntarily.

Section 2 of the act provides that the word "bank" as used in the act shall be construed to mean any corporation which shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust or investment business as defined in the act. At first blush this would seem to indicate that the act did not purport to apply to unincorporated banks but, as will be hereinafter shown, this is not true. Further on in said section 2 it is provided that the banking business cannot be carried on in this state except by means of a corporation duly organized for such purposes; and still further on in said section it is declared that the act shall not apply to any person, firm or association now doing a private banking business except that private banks in existence at the time of the act shall "come under all of the provisions of this act which may be fairly applicable thereto."

Though the above provisions of said section 2 are somewhat inconsistent, it is my opinion that what the legislature intended to say was that from and after the passage of the act the banking business could

be carried on in this state only by a corporation organized for that purpose except that private or unincorporated banks in existence and doing business at the time of the passage of the act could continue to do business and that they would be subject to the terms of the act in all cases where the provisions of the act apply to private banks only, or can be fairly applied to them as well as to incorporated banks.

It is further my opinion that the first sentence of section 2 of the act declaring that the word "bank" shall be construed to mean any corporation which shall have been incorporated to conduct the business of receiving money on deposit, or transacting a trust or investment business, must be read in connection with the proviso that private banks are subject to the terms of the act in all cases where they are fairly applicable to such banks and when so read together the meaning of said section is in effect that wherever the word "bank" is used in the act it means an incorporated bank in all instances except those where it plainly appears to have reference to private banks only, and in addition thereto it includes unincorporated banks in all those cases wherever the word appears in the provisions of the act which are as fairly applicable to unincorporated banks as to incorporated banks.

It seems to me no other reasonable construction could be placed upon the act for the title to the act states that it is an act for the incorporation and regulation of banks and trust companies and for the regulation of private banks and for the liquidation of banks. In pursuance of the title the legislature enacted into the chapter a complete body of laws relative to the banking business and with the exceptions hereinbefore noted repealed all the existing banking laws. There is incorporated in the act some of the previously existing statutes relating to private or unincorporated banks but there were omitted from the act those provisions of section 6100 and subsequent sections of the revised codes of Montana of 1921 which provided for the appointment of a receiver of unincorporated banks in case of insolvency.

These sections which were omitted from chapter 89 were repealed by said chapter so that unless the provisions for liquidating a bank contained in said chapter 89 apply to unincorporated banks there would be no statutory authority for liquidating an unincorporated bank or for the appointment of a receiver thereof where insolvency occurs after the enactment of said chapter 89. Of course, the legislature will not be held to have intended such a result to follow from the repeal of those sections by the enactment of chapter 89. Under chapter 89 receivers are no longer appointed for insolvent state banks but they are liquidated through the state banking department and it is my opinion that the sections above referred to authorizing and requiring the superintendent of banks to liquidate insolvent banks and those banks which are voluntarily placed in his hands for liquidation apply to all state banks in the state of Montana whether they are incorporated or unincorporated banks.

I am therefore of the opinion that it is your duty under chapter 89 of the laws of 1927 to liquidate the affairs of any unincorporated bank

which has voluntarily closed its doors and placed its affairs in your hands for liquidation.

Very truly yours,

L. A. FOOT,

Attorney General.