

Opinion No. 164**Banks and Banking—Stockholders' Liability—Director.**

HELD: A stockholder who, for two years, has served as director of bank and made and filed sworn statements to Superintendent of Banks that he is a stockholder and director, would have difficulty showing transfer in good faith, and may be estopped and should not be released from liability.

April 14, 1933.

In your request for an opinion, you state that George Wolf of Great Falls, who has served as a director of a bank and has for two years, filed sworn statements that he actually owned the stock and was holding it as a director, desires to be released from an assessment of 100% on his stock in this bank, which is now closed, claiming that he did not own the stock and that it was loaned to him to serve as a director and that later he turned the stock back to the bank to be transferred out of his name but that this has never been done. You ask whether or not Mr. Wolf has any just offset in the absence of any further proof.

The general rule in regard to transfer of stock is stated in 7 C. J. 504, as follows: "As a rule transfers made in good faith and in accordance with legal requirements are valid and release stockholders from subsequent liability."

Inasmuch, however, as Mr. Wolf has made and filed sworn statements with your department to the effect that he actually owned the stock and was holding it as a director and during this time actually served as a director of the bank on the strength of his ownership of the stock, it would certainly be extremely difficult for him to show that he made a transfer "**in good faith**" two years ago. If he made such transfer, he is guilty of making a false statement. In view of the foregoing it would seem that Mr. Wolf would also be estopped from asserting that he is not a stockholder.

I am not entirely clear as to all the facts regarding the alleged transfer. A stockholder cannot relieve himself from a liability for the debts of a bank by transferring his stock to the bank. Matter of Reciprocity Bank, 22 N. Y. 9; Kearny v. Buttles, 1 Oh. St. 362; 7 C. J. 505-506.

Considering these facts, I am of the opinion that if Mr. Wolf desires "absolution" from liability as a stockholder he should obtain it from the court after a full hearing rather than from your office.