

Opinion No. 368**Banks and Banking—Reconstruction Finance Corporation—Superintendent of Banks—Closed Banks, Borrowing Money for.**

HELD: The State Superintendent of Banks may borrow money from the Reconstruction Finance Corporation for the purpose of paying dividends to creditors of closed banks being liquidated under his supervision and pledge the assets of said closed banks as security.

October 20, 1933

You have submitted the following question: "This Department is being asked to obtain loans through the Reconstruction Finance Corporation for the purpose of paying dividends to creditors of closed banks being liquidated under its supervision. This Corporation requires, before any applications for such loans are considered, that it be furnished with opinions of the attorney generals of the various states as to the extent of authority granted by banking laws to liquidating agents for the purpose of making such loans. We would therefore appreciate your opinion as to whether or not the banking laws of Montana give this office power to borrow money and pledge assets of closed banks for the purpose of paying dividends."

It is doubtless true that when the Superintendent of Banks takes over a bank for the purpose of control or liquidation he has no authority outside of that conferred by statute. His jurisdiction and power must be found in some particular statute. (1 Mitchie Banks and Banking, Section 70, page 65; 3 Mitchie, Section 17, page 34; Section 25, page 44.) The same rule applies to a bank receiver. (3 Mitchie, Section 98, page 149; Section 102, page 155.) A liquidating agent who is an agent "to assist him and act for" the Superintendent of Banks (Section 129, Chapter 89, Laws 1927) has no greater power than his principal, the Superintendent of Banks. The powers of the Superintendent of Banks on the closing of a bank are set forth in Section 127, Chapter 89, Laws 1927:

"Upon taking the assets and business of any bank into his possession, the Superintendent is authorized to

collect all moneys due to such bank, and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate the affairs thereof. **He shall have general and inclusive power and authority, except as otherwise limited by the terms of this Act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such bank and the speedy economical liquidation of the assets and affairs of such bank and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is practicable or desirable.** He may institute, in his own name as Superintendent, or in the name of the bank, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the District Court of the county in which such bank is located, or to the judge thereof, in chambers, may procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such bank, on consent of the court."

Is the power to make a loan and pledge the assets of a closed bank given in the phrase in the above section quoted? ("to sell and dispose of") It has been held that the phrase "dispose of" taken by itself and without qualification may confer broader power than the words "to sell." These words qualified by associated words or other restrictive provisions have been held to grant only the power to sell. (*Phelps v. Harris*, 101 U. S. 370, 381; *Killmer Paint etc. Co., v. Davenport etc Co.*, 136 Okla. 252, 277 Pac. 653, 63 A. L. R. 997; *Words and Phrases*, Volume 7, page 6407. See also cases cited in note 19, 57 C. J. p. 114.) In view of these authorities and the fact that the words "to sell and dispose of" are followed by the phrase "which sale" and not by the phrase "which sale or other disposition" or other similar words, I am of the opinion that the words "dispose of" are synonymous with the words "to

sell" and that this phrase confers authority to sell only. The words underscored in the section above quoted are quite sweeping, and confer a great deal of power upon the Superintendent of Banks. The only limitation in the act seems to be that the consent of the court must be obtained in order to give the Superintendent power to sell.

Can it be said that pledging the assets of the bank for a loan, in order to pay depositors in part, or in full, is an act "for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs of such bank and the payment of its creditors?" It is not difficult to imagine a situation where a small loan secured by a pledge of part of the assets might save the bank from loss and thus be a conservation of the assets and therefore most desirable. It is possible that a larger loan pledging all the assets of the bank may have the same effect, as well as to enable the Superintendent to pay the creditors or to enable him to reopen the bank. It is possible, too, that such may tend to the "economical liquidation of the assets and affairs of such bank."

Without knowing facts in a given case I am unable to say that such loan and pledge, as a matter of law and divorced from the facts, would not be for the purpose described above. I am therefore inclined to the opinion that the statute should be given a liberal construction and that the Superintendent of Banks has such power to be exercised according to his sound judgment and discretion upon the facts in a given case, with due regard to the protection and benefit of the creditors, as well as the character and terms of the loan and the liberal policy of the lender authorized and contemplated by the Federal statute creating the Reconstruction Finance Corporation.

In the limited time at my disposal I have been unable to find that our court has passed upon this or a similar question nor do I find any other authorities directly in point or interpreting a similar statute. I am therefore free to admit that the question is an open one and not entirely free from doubt.