

Opinion No. 170.**Banks and Banking—Reconstruction Finance Corporation—Capital, Impaired—Preferred Stock, Devaluation of—Superintendent of Banks.**

HELD: The Superintendent of Banks, in the exercise of his judgment, may permit state banks to devalue preferred stock held by the Reconstruction Finance Corporation, in accordance with Section 345 of the National Banking Act of 1935.

September 11, 1935.

Hon. Frank H. Johnson
Superintendent of Banks
The Capitol

You have submitted the following:

"The Reconstruction Finance Corporation have purchased a number of preferred stocks in Montana banks both state and national. As to the state banks these stocks have been purchased under the authority given in Chapter 15 of the 1933-1934 Session Laws. Under Section 3 of this Act it provides that this stock may be issued and sold under such terms and conditions as may be approved by the superintendent of banks or as may be required for the purchase of such stock by the Reconstruction Finance Corporation.

"Several banks have issued this stock and it has now been determined that to relieve the bank of frozen assets that a plan has been devised whereby the Reconstruction Finance Corporation will accept new preferred stock certificates for a reduced value of the stock upon the face of this certificate thus enabling the bank to use the difference in taking out frozen assets, for example: A state bank issues \$100,000 preferred

stock to the Reconstruction Finance Corporation of a par value of \$100 a share. The Reconstruction Finance Corporation now consent to revalue this stock at \$10 a share and they will accept new certificates of stock for one thousand shares at \$10 a share which would make a difference of \$90,000 for charging off frozen assets. However, the Reconstruction Finance Corporation require that the optional price for the retirement of this preferred stock shall be the original sale price of the stock and not the price at which the shares are reissued.

"The question, therefore, is whether or not a Montana state bank can issue preferred stock having a retirement price and liquidation value greater than the par value.

"Section 345 of the National Bank Act of 1935 provides that in determination by the Federal Reserve Bank as to whether or not a bank has an impaired capital shall be based on par value of preferred stock rather than retirement price, if retirement price is greater than par.

"Will you kindly advise us if this department could permit a bank to devalue its preferred stock as to a liability and still protect the Reconstruction Finance Corporation with an optional price equal to the original payment."

I do not find anything in the Montana statutes forbidding such devaluation of preferred stock held by the Reconstruction Finance Corporation. It does not appear that such devaluation, with right of the Reconstruction Finance Corporation to receive the original investment in case of retirement, will work to the disadvantage of the depositors of a bank. The loss, if any, will be borne by the Federal government through the Reconstruction Finance Corporation. Section 3, Chapter 15, Laws of 1933-34, provides that: "Preferred stock may be issued and sold upon such terms and conditions as may be approved by the Superintendent of Banks."

In the absence of statute forbidding it and it appearing that the depositors will not be harmed, it is my opinion that the Superintendent of Banks, in the exercise of his judgment, may permit state banks to devalue pre-

ferred stock held by the Reconstruction Finance Corporation, in accordance with Section 345 of the National Banking Act of 1935.