

Opinion No. 363.

**Banks and Banking—Liquidation of
Banks—Stockholders' Claim—
Superintendent of Banks.**

HELD: The Superintendent of Banks is not authorized to surrender the remaining assets of a bank in liquidation until all claims of stockholders have been paid or until they have waived their rights to the statutory liquidation by the Superintendent of Banks.

October 13, 1936.

Hon. Frank H. Johnson
Superintendent of Banks
The Capitol

You have submitted the question of whether it is the duty of the Superintendent of Banks to surrender the remaining assets of a bank in liquidation to the directors as trustees for stockholders or to such other person as may be designated as trustee of a majority of the stockholders, when it shall appear that all claims have been paid, except the amounts advanced by the stockholders as voluntary assessments, or otherwise.

Section 6014.144 provides for the order of payment of the debts of a bank being liquidated by the Superintendent of Banks. It lists six classes; the sixth being: "Unliquidated claims for damages and the like, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or

paid in by way of special or voluntary or other assessments; * * *."

Section 6014.148 provides: "Whenever the Superintendent of Banks has paid to each and every depositor and creditor of such bank whose claims shall have been duly approved and allowed as herein provided, the amount due thereon, or made satisfactory adjustment thereof, and shall have made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and shall have paid all the expenses of liquidation, he shall file with the clerk of the district court of the county in which the bank is located, a report of his administration of said trust. If there be remaining assets on hand the superintendent of banks may apply to the judge of said court in open court or in chambers, for an order authorizing him to surrender the remaining assets together with all the stationery, correspondence, books and records, had and kept by the bank while it was a going concern to the directors of said bank in office at the time of closing the same, as trustees for stockholders, or to such other person, if any, as may have been or may be designated as trustee by a majority of the stockholders."

It will be seen that the surrender of the assets by the Superintendent of Banks is made dependent upon the payment of all claims as "herein provided"; or, in other words, as provided in Section 6014.144, supra. In view of the specific provision in this section above quoted, providing for the payment of claims of stockholders for amounts advanced or paid in by them to the bank, and since the liquidation of banks must be made according to statutory procedure, it is my opinion that the Superintendent of Banks is not authorized to surrender the remaining assets of the bank until all claims of stockholders have been paid, or until they have waived their rights to the statutory liquidation by the Superintendent of Banks. It is quite apparent that there may be good reasons for this provision. If only a minority of the stockholders have paid assessments, their rights may be jeopardized by the majority in case the assets are surrendered. The rights of stockholder creditors subject to the classi-

fication as to priority made by the legislature, should be as sacred as those of other creditors.