

Opinion No. 115**Taxation—State Banks—Insolvency.**

HELD: A state bank becoming insolvent and going into liquidation on June 19 is nevertheless subject to assessment as a state bank on capital stock and monied capital.

August 11, 1939.

Hon. W. A. Brown
State Examiner, Ex Officio Superintendent of Banks
The Capitol

Dear Mr. Brown:

You have submitted the following facts and question:

"On June 15, 1939, the Glendive State Bank, Glendive, Montana, went into voluntary liquidation and since that date has not carried on or transacted any business, and is now in process of liquidation under the laws of this state.

"The County Assessor of Dawson County has assessed the capital stock and monied capital pursuant to the law, as of the first Monday of March of this year, and it is my understanding that an attempt will be made to collect the taxes levied. Since the bank is no longer engaged in business, it seems to me that it would be inequitable for the Liquidating Officer to be required to pay taxes upon the capital stock and monied capital upon the assessment so made for the full year.

"Section 6014.106 provides as follows:

"Whenever any bank ceases to do business as a bank no taxes shall be levied or collected in accordance

with the laws governing the assessment of banks, but its property shall be assessed in accordance with the laws governing the assessment of similar property of private corporations.'

"Under this section it seems to me that the county should collect only that portion of the year that the bank was actually engaged in business.

"I wish that you would advise me whether or not the taxes levied for the year 1939 upon the capital stock and monied capital can be collected by the county treasurer or whether all taxes shall be levied and collected in accordance with the general laws governing the assessment of banks, or whether all of its property shall be assessed in accordance with laws governing similar property."

Assessment of property is made on the status existing at 12:00 o'clock M., on the first Monday of March each year. (Section 2002, R. C. M., 1935; Volume 15, Opinions of the Attorney General.) There is no exception in the case of banks. (Section 2067, R. C. M., 1935.) See also the following opinions of the Attorney General: Volume 15, p. 307; Vol. 14, p. 12; Vol. 11, p. 265; also *Ford Motor Co., et al. v. Linnane et al.*, 102 Mont. 325, 57 Pac. (2) 803.

The bank was a going concern until June 15, 1939. On the first Monday of March, 1939, Section 6014.106 had no application because the bank was then solvent and a going concern. We find no statutory authority for changing the method of assessment after it has been made because the bank thereafter went into voluntary liquidation or became insolvent. The bank is in no better position than the taxpayer whose home was assessed as of the first Monday in March but burned down on June 19, or whose livestock may have become lost or destroyed after it became subject to assessment. Aside from the fact that we find no statutory authority for applying two methods of assessment, one for the period when it was solvent and one for the period of insolvency, we do not think it would be practical to do so. The legislature has fixed the first Monday in March of each year as the time when the status, as well as the situs of

property becomes fixed for assessment purposes and this applies to all property.

It is therefore my opinion that the bank should be assessed for the year 1939 upon the capital stock and monied capital and that taxes levied on that basis can be collected by the county treasurer.