Opinion No. 14-1339

September 26, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Howell Earnest, Traveling Auditor and Bank Examiner, Santa Fe, New Mexico.

BANKS.

Required reserve of banks of discount and deposit, savings banks and trust companies.

OPINION

*{*199}* I have received your letter of yesterday in which you ask my opinion as to what the required reserve, if any, is of banks of discount *{*200}* and deposit, savings banks and trust companies. You are more familiar with the statutes relating to banks than I am, and I must assume that you have not been able to find anything in those statutes declaring what is required in the way of reserve. I find, however, that there are some statutory provisions to which attention should be called.

With regard to savings banks, by Section 266 of the Compiled Laws of 1897, it is provided that the directors of savings banks shall not declare a dividend when the capital shall have become impaired so that it is not worth the full amount paid in after the payment of all liabilities, and until the provisions of law respecting the surplus fund are fully complied with. This section further provides that when the capital stock becomes impaired to the extent of twenty-five per cent thereof, then the corporation shall cease to do business unless the impairment is made good within sixty days. Section 268 requires the creation of a surplus fund by setting apart at least ten per cent of the net earnings until such fund shall amount to forty per cent of the capital stock. While these provisions do not refer directly to what is called a reserve, yet they do provide for something of that nature for the security of customers of the bank.

As to trust companies, Section 10 of Chapter 52 of the Laws of 1903, which is an act relating to trust companies, requires that every corporation referred to in the act shall keep on hand an amount at least equal to fifteen per centum of the aggregate amount of its liabilities other than liabilities for which bonds are required to be deposited with the auditor of the territory, and that auditor, whose duties are now transferred to the traveling auditor, may require any corporation, whose lawful money reserve shall be below the amount required, to make good the reserve, and if the corporation fails for sixty days to make it good, the auditor is to take charge of the corporation, close its doors and make a thorough examination of its affairs.

Section 3 of Chapter 109 of the Laws of 1903, which is an act to permit mercantile companies to do banking, requires any corporation under that act to have on hand a

reserve fund of not less than twenty-five per cent of its deposits, in which case it is not to be deemed as having an indebtedness exceeding its capital stock by reason of deposits.

I believe that these are the only statutory provisions which will throw any light upon the question which you ask. As bank examiner your duties appear to be limited to making examinations of banks, but you are authorized to take action against a bank only when it appears to be insolvent, in which case you report the fact to the governor, and he may direct you immediately to take charge of the bank and all of its property. As one of your duties it is also provided, by Section 8 of Chapter 96 of the Laws of 1909, that whenever the capital stock of any bank has been impaired you shall notify the bank to make the impairment good within ninety days.

As to trust companies, under Section 15 of Chapter 52 of the Laws of 1903, when it shall appear to you that the capital stock is reduced by impairment or otherwise below the amount required by law, it becomes your duty to require the impairment to be made *{*201}* good within three months, and if it is not made good you may take charge of the corporation and close its doors for the purpose of examination, and this is to be followed, if you believe it unsafe for the corporation to continue business, by proceedings in the district court for the appointment of a receiver.

While it is the fact that there is no general provision as to all cases of banks concerning the necessary reserve, yet there seems to be a practical remedy, if the reserve is insufficient, when we consider the definition of insolvency of a bank contained in Section 7 of Chapter 96 of the Laws of 1909, to which I invite your careful attention. That shows that a bank is insolvent when the actual cash market value of its assets is insufficient to pay its liabilities, or when it is unable to meet the demands of its creditors in the usual and customary manner.

It would see, however, that we ought to have legislation on this subject, and I trust that you will see that it is distinctly called to the attention of the legislature at its next session.