

Opinion No. 15-1586

July 16, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. L. B. Wooters, Assistant Bank Examiner, Santa Fe, N. Mex.

As to the payment of necessary expenses of administration while a bank is in the hands of the state bank examiner.

OPINION

{*159} In reply to your verbal request for an opinion -- supplemented by your letter of the 15th -- in regard to the power of a special deputy bank examiner to pay out funds which might come into his hands while he is in charge of an insolvent bank, we would advise you that we do not find anything in the law creating the office of bank examiner, compiled as Article IV of Chapter 67 of the session laws of 1915, which either expressly or impliedly authorizes the bank examiner or his appointee to pay out funds coming into his hands while in charge of a banking institution.

We are of the opinion, however, that if it should be necessary to use a part of the funds to pay the necessary expenses of administration while the special bank examiner is in charge, that under the authority of that part of Section 84 which reads as follows,

"The bank examiner, upon so taking possession of any bank, may appoint a special deputy bank examiner **to take charge of the affairs of such bank temporarily and until said bank resumes** business as in Section 83 provided, or until a receiver is appointed as hereinbefore provided,"

he would be authorized to do so.

In addition to the failure of the act to specifically provide for the expenditure of the moneys of the institution by the special bank examiner, we are persuaded that our opinion above is correct by reason of the provisions of Section 87 of the act which provides that,

"The state bank examiner and the special deputy bank examiner, during such period as they are in possession of any bank shall have the power to collect all debts, dues, claims and demands belonging to the bank, making a strict accounting thereof when the possession of such bank shall be delivered {*160} over either to the officers and directors upon resumption of business, or to the receiver appointed as herein provided."

You will note that this section provides the specific duties of the bank examiner or his deputy in regard to the disposition of funds collected, but grants no authority to dispose of the same in any manner except to account for them to the officers and directors or to

the receiver. It would appear, therefore, that it was the intention of the legislature that the special bank examiner should have no authority to expend the moneys of the bank for any purposes whatsoever. This view of the matter is strengthened by reason of the last part of Section 84 which provides that in no case shall the bank continue in charge of a special deputy bank examiner for a longer period than sixty days, it evidently being the intent that the bank examiner or his assistants should have no part in the actual liquidation of the bank itself, but only should have temporary charge or control until such time as other disposition as provided by the act should be made of the affairs of the bank.

In regard to the second question contained in your letter as to the effect of Chapter 67 of the Laws of 1915, known as the banking act, upon banking institutions carrying on business under the provisions of Chapter 109 of the Laws of 1903, we will say that we desire to make further investigation and examination before rendering any opinion upon this matter, it being evident that it is of sufficient importance to justify a very careful examination of any authorities that may be available.