

Opinion No. 15-1631

August 30, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. R. H. Carter, State Bank Examiner, Santa Fe New Mexico.

Over drafts in banks.

OPINION

{*204} I have received your letter of even date herewith in which you say that in the discharge of your official duties you find many bankers having great difficulty in preventing over drafts by some of their customers, and that you are very anxious to render them any assistance toward the accomplishment of this worthy end which may be proper. You further say that with this in view it has occurred to you to write a letter to the offenders calling attention to the practice on their part, and urging their cooperation in the future to prevent over drafts in banking institutions in this state, writing a separate and distinct letter to each individual, dealing with each case on its merits, but you have some doubt as to whether this practice would be in violation of Section 69 of Chapter 67 of the Laws of 1915, and your letter indicates that the point in that section which causes this doubt in your mind is the one which requires you and your deputy to take and subscribe an oath to keep secret all information acquired by you in the discharge of your duties.

I incline to the opinion that what you have contemplated doing might perhaps not be considered as an infraction of the obligation of that oath, but different minds might take different views of it, and I would not like to predict what the decision would be if it were made a judicial question and taken into the courts. Some depositors might become irritated and make complaint and criticism of your action, and while I would not advise any public officer to adopt or change any course of action merely for fear of such criticism, yet I think it is better for the public service to avoid giving opportunities for anything of that kind if possible.

Therefore I suggest, as a better course, that you should write to those banks where you have discovered a serious number or amount of over drafts, calling attention to the necessity of avoiding such a practice in as strong language as you may deem proper, and any bank officer who really desires to diminish or suppress the amount of over drafts can send copies of the letter to such of the customers of the bank as require reminders of that kind, so as to show that there is some danger of the bank getting into difficulty with your department unless the over drafts are kept down.