

Opinion No. 16-1833

June 21, 1916

BY: FRANK W. CLANCY, Attorney General

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

When penalty of \$ 5.00 a day upon banks failing to make reports to state bank examiner becomes operative.

OPINION

{*395} I have your letter of even date herewith with reference to the Columbus State Bank, of Columbus, New Mexico. It seems, from your letter, that a call was made by you on all banks in the state on May 6, 1916, for a report, in accordance with the requirements of Section 24 of Chapter 67 of the Laws of 1915, showing the condition {*396} of the bank at the close of business on May 1, 1916, but that no report has yet reached your office from the Columbus Bank. Upon this state of facts you ask my opinion as to the exact date on which the penalty of five dollars for each day's delay, which the statute requires every bank failing to comply with said Section 24 to pay to the State Bank Examiner, becomes operative, and also as to the proper procedure if the payment of the penalty is refused.

The requirement of the statute is that the report shall be transmitted to the State Bank Examiner "within fifteen days after his call therefor." This might be construed as meaning fifteen days after the issuance of the call, but there might be room to argue that the call does not become effective until it is received by a bank, or at least, not until after the allowance of a reasonable time for the call to reach the bank. In this instance the call was issued on the 6th of May, which was Saturday. In the ordinary course of mail it should have been received at Columbus on Monday, the 8th of May, but I think you might, with propriety, give one day's additional time, and begin to count the fifteen days within which the report should be made from the 9th of May. This would make the penalty begin on the 25th of May.

If the payment of this penalty should be refused, the proper course to pursue would be to call on the district attorney to begin an action against the bank for the recovery of the penalty. You could not properly employ any other attorney to begin such an action, in view of the provisions as to the duties and power of the district attorney to be found in Sections 1859 and 1860 of the Codification.

I notice, from a copy of the call which you enclose with your letter to me, that the attention of the banks was distinctly called to the penalty of five dollars for each day's delay, and also from a copy of your letter of the first of February, 1916, to the bank in question, that the bank was in default at that time as to a previous report, and you distinctly advised the bank that you would be compelled thereafter to consider such

delays absolutely inexcusable, and would be compelled to exact the full penalty which the law imposes. Under these circumstances it appears to me that you must insist upon the payment of the penalty as a matter of official duty. Failure to do so would probably lead to a general disregard of the requirements of the law in this particular.