

**Opinion No. 17-1987**

May 5, 1917

**BY:** GEORGE C. TAYLOR, Assistant Attorney General

**TO:** Mr. George H. Van Stone, State Bank Examiner, Santa Fe, New Mexico.

Banks May Declare Dividends Even Though Their Surplus Does Not Equal Twenty Per Cent of Their Capital.

**OPINION**

I have your letter of April 30, in which you state that it appears that many of the State Banks have disregarded Section 45, Chapter 67, Laws of 1915, by declaring dividends before adding to their surplus fund to the extent of 20 per cent of their capital, and requesting the views of this office on this state of facts.

In reply, you are advised that Section 45 does not preclude the declaring of dividends by directors of banks whose surplus does not equal 20 per cent of their capital. The object of the statute is to require the gradual formation of a surplus fund out of the bank's earnings until such fund equals 20 per cent of its capital. If nothing has been earned, of course, nothing can be placed in the surplus fund. If a net profit has been actually earned, at least ten per cent of this net profit must be transferred to the surplus fund before the remaining net profit may be disbursed in the form of dividends. When the 20 per cent surplus has been attained, the requirements of Section 45 have been fully met. It does not preclude the declaring of a dividend by banks whose surplus is less than 20 per cent, so long as the declaration of the dividends is preceded by the transfer to the surplus fund at least ten per cent of the earnings for the period covered by the dividend.