

Opinion No. 21-3214

December 24, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. J. B. Read, State Bank Examiner, Santa Fe, New Mexico.

Rights of Renters of Safety Deposit Boxes in Insolvent Banks.

OPINION

{*106} In reply to your letter of the 21st instant, requesting an opinion regarding the rights of renters of safety deposit boxes in a bank which has been taken over by the State Bank Examiner under the statutes, to have access to such boxes and to remove the contents thereof, I would advise you as follows:

The liability of the bank in connection with safety deposits made in boxes furnished by it to its clients for an annual rental is one entirely different from its liability as a debtor to the person making a deposit of funds in the bank.

The bank acts as a mere bailee in accepting deposits of a special nature, such as securities, and the liability of the bank for such deposits when made in a safety deposit box accrues only for ordinary negligence.

Therefore, it is my opinion that a renter of a safety deposit box has authority to have access to such box and to remove the contents thereof at will unless restrained by some court order.

Under the statutes of this State there might be a difference between the renter of such a box if he is a director of the insolvent bank and I would, therefore, suggest that directors of such banks be refused admission to their boxes until this question has been finally {*107} determined by the courts. Other persons have the privilege of the right to access to the boxes and to remove their property therefrom.