

Opinion No. 22-3223

January 11, 1922

BY: HARRY S. BOWMAN, Attorney General

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

Discharge of Persons Secondarily Liable Upon Negotiable Instruments.

OPINION

{*107} In reply to your oral request for an opinion regarding the discharge from liability of persons secondarily liable upon negotiable instruments, in cases where an agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, has been entered into, which was accompanied by a letter from Hon. E. B. Stroud, Jr., official counsel for the Federal Reserve Bank of Dallas, I wish to advise you as follows:

I have made careful and thorough examination of the authorities {*108} involved in the inquiry proposed as the questions suggested are of paramount importance in view of the failure of some of our state banks which had become endorsers upon paper of their customers discounted to the Federal Reserve Bank.

Section 714, Code 1915, provides that:

"A person secondarily liable on the instrument is discharged * * * (6) by any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved."

Your correspondent inquires whether it will be the position of your office that the holder of a note may extend the time of payment of same without discharging the parties secondarily liable, first, where the consent of the party secondarily liable is obtained, and second, where all rights of recourse are expressly reserved at the time the extension is made, against the party secondarily liable on the instrument, and whether you would consider the claim of the Federal Reserve Bank of Dallas against insolvent banks whose paper said Federal Reserve Bank had discounted to be in the same status as before the extension was made.

I find that the authorities are uniform in holding that an extension may be granted under the circumstances mentioned without discharging the liability of those secondarily liable upon the instrument.

The courts of this state have not as yet passed upon either of the questions involved in the inquiry, and in the absence of any judicial holding to the contrary, I would

recommend that your department follow the trend of decision as indicated in this opinion.

I beg to return herewith the letter from Mr. Stroud submitted with your inquiry.

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