

Opinion No. 22-3316

March 8, 1922

BY: HARRY S. BOWMAN, Attorney General

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

Preference of U.S. Reclamation Service to Funds in Insolvent Banks.

OPINION

{*132} In reply to your letter of February 14th regarding the claim of the U.S. Reclamation Service to a priority in the assets of the Bowman Bank & Trust Company, of Las Cruces, for deposits of U.S. Reclamation funds in that bank at the time of the closing thereof, I wish to advise:

In the correspondence which accompanied your letter, it is claimed by Mr. Dent, District Counsel for the Reclamation Service, that by reason of Section 6372, U. S. Compiled Statutes of 1918, Section 3466, U. S. Revised Statutes, the United States is entitled to a preference and priority in the payment of its claims when the person indebted is insolvent and there are insufficient funds to pay claims in full.

Ordinarily the proposition as stated by Mr. Dent is correct, but the United States Supreme Court has held that a national bank which fails is not within the operation of this section.

The holding in the case mentioned is based upon the provisions of the National Bank Act, which, it was held, supercede the provisions of Section 3466, Revised Statutes, in so far as there being any priority or preference in the United States for funds of the United States deposited in such banks.

I am of the opinion, however, that the same rule does not apply to state banks, and it would appear from all of the authorities upon {*133} this subject, that funds of the United States in a state bank which is insolvent and unable to pay the claims in full are subject to the preference and priority of the United States Government.