

Opinion No. 22-3545

July 28, 1922

BY: A. M. EDWARDS, Assistant Attorney General

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

Receiver Insolvent State Bank Authorized to Classify Worthless and Uncollectible Paper of Institutions.

OPINION

{*171} I have your letter of July 28th in which you ask whether the receiver of a defunct bank in New Mexico has the power, under court order, to classify worthless and uncollectible paper and to charge off the amount of these classes of paper for the purpose of holding the stockholders liable for the obligations of the bank.

There is no specific provision in our statutes, so far as I have been able to find, expressly giving this power to the State Bank Examiner.

Under Section 40 of Chapter 67 of the Laws of 1915 the stock-holders are held individually responsible to the extent of the amount of their stock in the defunct bank at the par value thereof for all contracts, debts and engagements of said bank.

Under Section 85 of said Chapter 67, as amended by section 32 of Chapter 120 of the Laws of 1919, the State Bank Examiner is authorized to wind up the affairs and business of the bank for the benefit of its depositors, creditors and stockholders. Such proceedings {*172} are to be governed by the general provisions of the general incorporation laws for the winding up of insolvent corporations. It would seem under this latter section that the State Bank Examiner who acts as receiver would have the right, under court order, to determine what assets of the bank were worthless and have them so held to be under order of the court. After this is done and it is determined what are the obligations of the stockholders, it would seem that under the law the court would have the right to direct proper action to be brought against the stockholders to enforce their liability for the obligations of the defunct bank.

We believe, therefore, that under court order you have the right to classify the assets of the bank and have such paper as is worthless so declared to be in order that the affairs of the bank may be finally wound up and the creditors paid so far as possible.