

## Opinion No. 31-35

January 28, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. Lawrence A. Tamme, State Bank Examiner, Santa Fe, New Mexico.

{\*35} This is in reply to your letter of January 16, 1931 concerning the return of certain stock certificates held by you under the authority of section 32-704, New Mexico Statutes Annotated, 1929 Compilation.

Under this section the bank examiner is directed to hold the securities until certain contingencies have occurred, and when it appears to the state corporation commission that there is no further reason why such corporation should continue under the control of the state bank examiner or state corporation commission, then the corporation commission shall make an order cancelling the permit and permitting the withdrawal of the securities and **"their return to the parties depositing the same, and no assignment or transfer of such securities in escrow shall be binding upon the state bank examiner unless approved by the said state corporation commission."**

While in the case you mention the permit has been cancelled for other reasons than those stated in section 32-704, it would seem reasonable that the same action in regard to the return of the securities should be taken, that is, upon order of the state corporation commission, the securities should be returned **"to the parties depositing the same."**

The sworn statement required by section 32-704 should, no doubt, be filed before the return of the securities.

Reason and the general law upon matters of this kind would seem to {\*36} require that such securities, when returned, should be returned to the one from whom they were received. The state bank examiner in this case is not an escrow agent in the strict sense of the term, but rather a bailee. In 6 C. J. 1084, a bailment is defined as follows:

"A bailment may be defined as a delivery of personalty for some particular purpose, or on mere deposit, upon a contract, express or implied, that after the purpose has been fulfilled it shall be redelivered to the person who delivered it, or otherwise dealt with according to his directions, or kept until he reclaims it, as the case may be."

In the case under discussion the deposit of the securities is required by law for certain purposes, upon the contract, implied by law, that when these purposes have been fulfilled the securities shall be returned to the **parties depositing the same.**

In view of the language used in the last four lines of section 32-704 to the effect that "no assignment or transfer of such securities in escrow shall be binding upon the state bank

examiner **unless approved by the said state corporation commission.**", you would probably be justified in delivering the certificates to the true owner, as and if determined by the corporation commission. Otherwise, in my opinion, it is your duty, when you return these certificates, to return them to the parties depositing the same.

By: Quincy D. Adams,

Asst. Att'y. General