

**OPINION**  
**63-22**

September 12, 1963 (OPINION)

BANKS AND BANKING

RE: Closing Receivership - Converting Assets to Cash

This is in reply to your letter of September 9, 1963, in regard to disposition of certain property rights now being held in the name of Eugene Rich, state examiner for the State of North Dakota. Your letter describes the property involved as follows:

Mineral Rights to the Northeast and Northwest Quarters of Section 17 in Township 2, Range 32, West of the First Meridian in the Province of Saskatchewan, Canada, containing 320 acres more or less, and dated May 17, 1956."

You inform us that it seems proper to dispose of this asset because:

First, we are presently required to pay taxes to the province of Saskatchewan and the Dividends are received from them in Canadian funds, which make for bookkeeping obstacles. Second, this is the only asset of its type and processing of it requires an unusually long period of our clerical time."

You state that you would like to transfer this mineral lease to the Bank of North Dakota for the purpose of their conducting a sale and thereby disposing of it at its present market value. This plan is agreeable with the Bank of North Dakota.

You also enclose a thermofax copy of the latest audit report of the Closed Bank Trust Fund.

You call our attention to the following sections of the North Dakota Century Code, to wit:

6-07-38. CLOSING OF RECEIVERSHIPS - SALE OF ASSETS - NOTICE. Every receivership must be terminated within five years of the date of the appointment of the first receiver for said bank. If ninety days prior to the expiration of said five year period any assets remain in the hands of the receiver, he shall cause notice of sale thereof at public auction to be given by publishing notice thereof in a newspaper in the county wherein the bank was located once each week for three successive weeks prior to the date set for sale, and such assets may be sold to the highest bidder. Such sale may be had at any earlier time when ordered by the court having jurisdiction. When the receivership of a closed bank is terminated, all books, records, documents, and other property of such bank, and any dividends unclaimed, shall be delivered over by such receiver to the state examiner and his receipt taken therefor by the receiver. Such receipt must be filed in the district court having jurisdiction, and the discharge of the receiver, whether

he be an administrative or judicial receiver, must be approved by such court before it becomes final. The state examiner shall be custodian of all books, records, documents, and other property of such bank and of the dividends unclaimed upon the winding up of the receivership proceedings, and shall be vested with title to any assets belonging to such bank and not distributed in such receivership, and he shall have full power and authority to covert such assets into cash. He also shall have authority to execute all deeds, satisfactions, assignments, or other documents required for the purpose of transferring undistributed assets or for the purpose of correcting public records and quieting title to property in which the insolvent bank has or has had an apparent interest. Any moneys collected by the examiner after the termination of a receivership shall be paid into the general fund of the state."

Section 6-07-46, as amended by chapter 201 of the 1963 Session Laws, provides:

6-07-46. DISPOSITION OF UNCLAIMED DIVIDENDS OR OTHER MONEYS DELIVERED TO STATE EXAMINER. Any unclaimed dividend or other moneys delivered to the state examiner by the receiver of an insolvent bank pursuant to the provisions of section 6-07-38 shall be paid to the state treasurer who shall credit such payments to the general fund of this state. Any unclaimed dividends or other moneys credited to such fund may thereafter be paid to the lawful owner thereof, his heirs, executors, administrators, or assigns when proven to the satisfaction of the state examiner that he is legally entitled thereto. Such payment shall be made by a warrant drawn by the department of accounts and purchases and issued in payment of claim voucher certified to by the claimant and approved by the state examiner. The moneys required for the payment of such claims are hereby appropriated out of the general fund."

6-07-74. DISPOSITION OF OTHER MONEYS PAID TO THE STATE EXAMINER BY RECEIVERS OF INSOLVENT BANKS. Repealed by S.L. 1963, ch. 201, Section 11."

6-07-49. INVESTMENT OF MONEYS IN THE HANDS OF THE STATE EXAMINER. Repealed by S.L. 1963, ch. 201, Section 11."

Looking to the thermofax copy of the latest audit report of the Closed Bank Trust Fund it would appear that mineral rights as such were delivered to the state examiner rather than the monetary proceeds thereof. The authority we find in the above-quoted statutory provisions would appear to be for the state examiner as such to convert such assets as here concerned into cash. His authority to transfer property right would appear to be an authority to transfer cash proceeds of sale of such assets to the state treasurer. It does not appear that the quoted statutes of themselves authorize transfer of the asset itself to the state treasurer.

It therefore would be our opinion that any sale of such asset must be made on behalf of the state examiner though we know of no reason why the Bank of North Dakota could not act as agent for this department in making such sale.

At such time as the proceeds of sale are turned over to him, we believe the above-quoted statutory provisions would authorize turning such proceeds over to the state treasurer.

HELGI JOHANNESON

Attorney General