

BANKS & BANKING;

Claims of United States have preference over other claims against failed banks.

5-21
May 15, 1934.



Hon. O. H. Moberly
Commissioner of Finance
Jefferson City, Missouri

Dear Mr. Moberly:

This Department acknowledges receipt of your letter of May 11th, 1934, with request for an opinion; which letter is as follows:

"According to Section 3466, R. S. of the United States, the Government holds that its claims against closed state banks and trust companies are entitled to preference over all other preferred claims and should be paid first. We would appreciate your ruling on this matter."

In addition to the letter of request we note from the correspondence accompanying said request that the United States of America, through its agents, is demanding of your Special Deputy Commissioner of Finance in charge of the affairs of the Bank of Liberal, the sum of \$645.02, postal funds, and \$197.17, funds of the Secretary of Agriculture, of the Seed Loan Department, which had been deposited in the above bank before it closed its doors.

The question asked by you is: Whether the United States of America has a preference claim superior to other preferred claims allowed against the failed bank in question.

R. S. Section 3466, U. S. Compiled Statutes 6372, Section 191, 31 USCA, provides as follows:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

And R. S. Section 3467, U. S. Compiled Statutes 6373, Section 192, 31 USCA, provides as follows:

"Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

In order to give the priority specified in the above statute there must be a showing of insolvency of the debtor, and the fact that the bank was adjudged insolvent and taken over by the Commissioner of Finance of the State of Missouri for the purposes of liquidation is sufficient showing of such insolvency.

It was held by the Federal District Court in the case of United States v. First State Bank, 14 Fed. (2d) 543 (So. Dak.), that where postal funds belonging to the United States had been deposited in a bank which had been taken over by the Superintendent of Banks of South Dakota under laws of that state because of insolvency, for the purpose of liquidating its assets, in which many cases were reviewed by the court, that this was sufficient to show insolvency of the bank, and in that event the United States was entitled to priority under Section R. S. 3466, supra.

The Supreme Court of Nebraska in the case of State ex rel. Sorensen v. Thurston State Bank, 237 N. W. 293, 1. c. 297, said the following:

"While a state bank may not be put in bankruptcy under the federal act, yet it may commit an act of bankruptcy so as to subject it to the priorities in favor of claims of the United States, as provided in section 3466, Revised Statutes of the United States. That section is to be liberally construed in favor of the United States. *Bramwell v. United States Fidelity & Guaranty Co.*, 269 U. S. 483, 46 S. Ct. 176, 70 L. Ed. 368; *United States v. Bliss* (D. C.) 40 F. (2d) 935; *Bliss v. United States* (C.C.A.) 44 F. (2d) 909. The right to priority in favor of the United States attaches when the conditions specified in section 3466 come into existence; this right cannot be impaired or superseded by a state law. *United States v. State of Oklahoma*, 261 U. S. 253, 43 S. Ct. 295, 67 L. Ed. 638. So we are of the opinion that the district court was right in allowing the claim of the United States for its unpaid deposit as a preferred claim."

The above statute giving priority to the United States is a statutory right and not a common law right which the government has exercised by reason of its sovereign powers. The person who becomes invested with the title to the assets of the bank is made trustee for the United States and first bound to pay its debts out of the debtor's property. *Beaston v. Farmers Bank*,

12 Pet. 102, 103-135, 9 Law. Ed. 1017, 1029, 1030; U. S. v. State of Oklahoma, 67 L. Ed. 638; 43 Supreme Ct. 295; 261 U. S. 253.

In the case of *United States v. Brock, State Bank Commissioner of Louisiana et al*, 5 Fed. (2d) 265, the court held that cashier's checks purchased by a postmistress with funds belonging to the government have a priority of payment, although the claim is filed by and allowed to her and afterwards assigned to the government; in which the court said:

"My conclusion is that the plaintiff should have judgment for the amount claimed and should be recognized as a privileged creditor to be paid by preference out of the funds in the hands of defendants as required by section 3466 of the Revised Statutes. *United States v. Bank of North Carolina*, 6 Pet. 29, 8 L. Ed. 12; *Bramwell v. United States (C. C. A.)* 299 F. 705; *Allen et al. v. United States (C. C. A.)* 285 F. 678; *Beaston v. Farmers' Bank*, 12 Pet. 104, 9 L. Ed. 1017."

It was also held in the case of *Bliss v. United States*, 44 Fed. (2d) 908, by the District Court that postal funds deposited in Nebraska State Bank of Humbolt constituted a preferred claim under R. S. Section 3466, supra, 31 USCA, Section 191, and the Federal Court in 24 Fed. (2d) 709, said:

"In suit by the United States to recover deposit by postmaster of postal funds in an insolvent bank, bankruptcy of bank was shown where state officer was in possession administering its affairs by virtue of affirmative action on part of governing body of institution, or with acquiescence of board of directors and stockholders, within meaning of Rev. St. Section 3466 (31 USCA, Sec. 191), entitling United States to priority as to deposit therein; formal assignment of estate of bank to state officer authorized to liquidate insolvent banking institutions being unnecessary."

The Federal District Court in the case of United States v. Adams, 9 Fed. (2d) 624, held that, under R. S. Section 3466 (Compiled Statutes 6372), giving preference to debts due the United States applies to the liquidation of insolvent state banks.

There are many other citations of authority which could be given to sustain the position that debts due the United States where the debtor is insolvent under Section 3466, R. S., supra, are preferred, but we deem the foregoing to be sufficient.

CONCLUSION.

It is, therefore, our opinion that the two claims filed by the United States are, under R. S. Section 3466, supra, preferred and are superior to other preferred claims against this bank and should be first paid. And it is our further opinion that, in the event your Special Deputy Commissioner of Finance did not pay them first, he might become individually liable therefor.

Very truly yours,

GOVELL R. HEWITT
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

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