

**OPINION  
66-26**

April 13, 1966 (OPINION)

The Honorable Walter Christensen

State Treasurer

RE: Banks - Deposit of Trust Company - Withdrawal

This is in response to your letter in which you ask for an opinion on the request of the Banker's State Bank and Trust Company of Fargo, North Dakota, to withdraw from your office their deposit of \$50,000.00. The deposit in question, as you stated in your letter, was made by said corporation to comply with the provisions of Sections 6-05-03 and 6-05-04 of the North Dakota Century Code as a condition precedent to transacting any business in this state.

If the Banker's State Bank and Trust Company has or will discontinue doing business, such funds may be withdrawn after it is determined that the patrons or persons who had business with the bank have been fully protected. The deposits were initially made to protect the public which has or will have dealings with the bank. If this condition is satisfied, the funds may be withdrawn. However, if the funds are to be used to satisfy the legal demands of depositors or persons who had business transactions with the bank as customers, such funds may be withdrawn and used for such purposes only if by so doing all customers will have been fully paid. The funds may not be withdrawn and used to satisfy the legal demands of some customers and not others. If the amount on deposit is not sufficient to cover the legal demands of each customer, then the funds must be retained and will be available for distribution under appropriate legal proceedings and equitable principles.

The funds may be withdrawn on the foregoing basis. However, if the banking corporation has trusts which it is administering and it has not yet discharged its obligations, the funds on deposit would have to be held until such obligations have been fully discharged. We have been informed that the banking corporation does not have any trust which it is now administering, consequently, this should be of no real concern.

The state examiner, as advisor of state banks and trust companies under the provisions of Title 6, would be the proper person to determine if the conditions as set out above had been met. You, as state treasurer, upon being advised by the state examiner that the conditions have been met and the obligations satisfied, may release said funds to the Banker's State Bank and Trust Company. The state examiner may also authorize the release of the funds, conditionally, to pay off depositors within the limitations as discussed earlier herein. We have been advised orally that the corporation will proceed to dissolve in one manner or another. This would indicate that any trust obligations that the corporation might have undertaken would have to be satisfied before same is accomplished. This, of course, is again the primary responsibility of the state examiner, i.e., to determine whether or not the conditions and obligations have

been satisfied. Whether or not such conditions or obligations have been satisfied is a question of fact.

HELGI JOHANNESON

Attorney General