

OPINION
44-28

June 23, 1944(OPINION)

BANKS

RE: Inactive Accounts

Your letter of June 21 addressed to the attorney general has been received and referred to the undersigned for attention and reply.

You inquire whether a bank may eliminate a deposit account in its individual ledger through the means of service charges where the account is otherwise inactive. You further inquire whether there is a law in respect to the proper disposition of funds deposited in a bank and where the depositors have apparently forsaken the funds or forgotten about them and where the bank is unable to contact such depositors.

Answering your first question, I beg to advise that I do not believe that a bank could legally eliminate an inactive account by making service charges. I am satisfied that such practice, if challenged, would not be upheld by the courts of the state. I have discussed this matter with the state examiner, and he agrees with me that such inactive balances or accounts should be carried under one heading known as "Dormant Account". If this is done, it would seem to me that there is no extra work connected therewith, and there is no reason why service charges should be made.

With reference to your second question, I beg to advise that there is no law in this state governing dormant and inactive accounts in banks. Where there is no state law governing such matters, the common law would apply. Inactive or abandoned accounts in banks are, of course, personal property, and under the common law, abandoned personal property did not escheat to the state but was subject only to the right of appropriation by the sovereign under a rule known as "Bona Vacantia"; and like rights of appropriation, except so far as limited by the state law in the several states and the Fourteenth Amendment to the Constitution of the United States. The common law rule which I have stated was laid down and approved by the Supreme Court of the United States in a recent case, in fact, the opinion was written on February 28, 1944, by Chief Justice Stone. The case is reported in the "Advance Sheet No. 9, 88th Law Ed."

ALVIN C. STRUTZ
Attorney General