

1978 S.C. Op. Atty. Gen. 212 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-186, 1978 WL 22654

Office of the Attorney General

State of South Carolina

Opinion No. 78-186

NOVEMBER 3, 1978

***1 SUBJECT: Banks and Banking**

Inability to pay a 'cash letter' of the Federal Reserve Bank constitutes insolvency by the payor bank.

TO: Robert C. Cleveland
Commissioner of Banking

QUESTION:

Is a bank insolvent if it cannot pay a cash letter from the Federal Reserve Bank?

AUTHORITIES:

Sections 33-1-20, [34-3-210](#), [34-3-660](#), [Code of Laws of South Carolina \(1976\)](#);

[12 CFR § 210.9\(a\)\(1\)](#);

[85 A.L.R. 811](#);

9 C.J.S., [Banks and Banking](#), § 156(d) (1938);

10 Am.Jur.2d, [Banks](#), § 755 (1963);

[Chandler v. Abney](#), 166 S.C. 523, 165 S.E. 190 (1932).

DISCUSSION:

A 'cash letter' is a group of checks drawn against a particular bank ('payor bank') which have been processed through banking channels before winding up in a check clearing bank (in this case a Federal Reserve Bank) for presentation by the clearing bank to the payor bank for payment. In this case the payor bank could not pay the cash letter after presentment. The question posed is: Does the inability to pay the cash letter constitute insolvency of the payor bank?

[Section 34-3-660 of the Code of Laws of South Carolina \(1976\)](#) indicates that a bank may be closed in the event of its 'inability to meet the demands of its depositors' or 'insolvency'. Generally, a bank is insolvent if it cannot meet its obligations in the ordinary course of business. [85 A.L.R. 811, 812 \(1933\)](#); [See Also](#), 9 C.J.S., [Banks and Banking](#), § 156(d) (1938).

The rule adopted by most of the courts considering the question is that in civil cases involving the meaning of the term 'insolvency' as applied to banks, a bank is insolvent if it is unable to pay its debts in the ordinary and usual course of business. 10 Am.Jur.2d, [Banks](#), § 755 (1963)

While the term ‘insolvency’ as used in the present South Carolina banking statutes has not been subjected to judicial interpretation, the South Carolina Supreme Court did interpret the term in regard to the 1932 Code (§ 7852 S.C. Code, 1932):

A bank is insolvent when, from the uncertainty of being able to realize on its assets, in a reasonable time a sufficient amount to meet its liabilities, it becomes necessary for the control of its affairs to pass out of its hands. [Chandler v. Abney](#), 166 S.C. 523, 527, 165 S.E. 190, 191 (1932) (quoting [Ex parte Berger](#), 81 S.C. 244, 62 S.E. 249, 252 (1908)).

Since banks are corporations (See, § 34–3–40 of the Code of Laws of South Carolina, 1976), some consideration should be given to the definition contained in the South Carolina Business Corporation Act, Section 33–1–20, Code of Laws of South Carolina, 1976.

‘Insolvent’ means inability of the corporation to pay its debts as they become due in the usual course of its business.

In this case, since the payor bank's financial condition prevented it from paying the cash letter after presentment by the Federal Reserve Bank,¹ it was unable to pay its debts in the ordinary and usual course of business. Therefore, the bank is ‘insolvent’ under the laws of this State.

*2 Moreover, since the checks included with the cash letter are drawn on the paying banks by depositors, it can also be argued that the bank has also been unable ‘to meet the demands of its depositors,’ since failure to pay the Federal Reserve Bank could result in chargebacks through the check clearing channels ultimately to the drawer of the check. Such action by the payor bank would be in effect a dishonoring of the check of the drawer-depositor, and thus a failure ‘to meet the demands of a depositor.’

CONCLUSION:

Failure of a payor bank to pay a ‘cash letter’ after presentment by a Federal Reserve Bank constitutes insolvency of the payor bank.

Richard B. Kale, Jr.
Assistant Attorney General

Footnotes

¹ 12 CFR § 210.9(a)(1) provides that a payor bank becomes accountable for the amount of each check received from a Federal Reserve Bank if it retains such item after the close of the banking day on which the item was received. It further requires a payor bank to make payment or remittance to the Federal Reserve Bank not later than the close of the banking day for such Federal Reserve Bank on the day on which such item was received by the paying bank.

1978 S.C. Op. Atty. Gen. 212 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-186, 1978 WL 22654