

## Opinion No. 47-5003

March 26, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Woodlan P. Saunders State Bank Examiner Santa Fe, New Mexico

{\*25} We are in receipt of your letter of March 20, 1947, in which you ask "whether banks organized under the laws of the State of New Mexico that are not qualified under their charter powers to conduct a trust business, may act as guardian for children or incompetent persons and whether such banks can act as executors or administrators of estates".

By our Banking Act, being Sections 50-101 to 50-1012, both inclusive, banks are divided into the following classes:

(a) Commercial Banks

(b) Savings Banks

(c) Trust Companies

While the same corporation may, under Section 50-215 and Section 50-217, carry on all three functions, these functions must be kept separate. Sections 50-503 and 50-504 authorized trust companies to act as executors, administrators or guardians. While the same corporation could be both a commercial bank and a trust company, the bank must {\*26} first have qualified as a trust company before it could operate under Sections 50-503 and 50-504. The only other section relating to your question is 33-105, setting forth the qualifications of executors and administrators. This section authorizes state banks to be appointed executors or administrators. In view of this section, this office previously has held, by opinion No. 3361, copy of which is enclosed, that commercial banks are authorized under the probate law, to qualify as executors and administrators. No similar provision appears under the laws relating to guardianship for children or incompetent persons, so that commercial banks are not authorized to conduct such a business.

Even though authorized by law to act as executors and administrators, the articles of incorporation of the bank involved must provide for the conducting of such a business or the attempt by the bank to act in such a manner would be ultra vires.

To summarize what has been said, it is my opinion that a commercial bank not qualified to do business as a trust company, may act as an executor or administrator of a decedent's estate, if the articles of incorporation of the bank authorize such business. It is further my opinion that a commercial bank may not act as a guardian for a child or an incompetent person, even though authorized to do so by their articles of incorporation.

By ROBERT W. WARD,

Asst. Atty. General