

Opinion No. 49-5198

February 18, 1949

BY: JOE L. MARTINEZ, Attorney General

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

{*19} We wish to acknowledge receipt of your letter of January 26, 1949, in which you inquire into the right of state chartered banks to make loans under the provisions of the Bankhead-Jones Farm Tenant Act, as amended.

Under the provisions of Section 50-307, New Mexico Statutes, 1941 Compilation, real estate loans may be made by a bank in an amount not exceeding 60% of the appraised value of the real estate and must be amortized within a period of ten years.

Under the provisions of the Bankhead-Jones Farm Tenant Act the United States Government, through the Farmers Home Administration of the Department of Agriculture, is authorized to insure loans coming within the scope of the Bankhead-Jones Act up to 90% of the reasonable value of the property and allows forty year in which to amortize said loan.

Certain other provisions in Sections 50-307 and 50-309 extend the rights of a state bank to make loans, but we feel there is no point in quoting said provisions since they will not alter the basic problem. There is a substantial conflict between the provisions of the Bankhead-Jones Act and the New Mexico Statutes and any loan made by a state bank under the {*20} provisions of the Bankhead-Jones Act would be in conflict with the provisions of the Statutes of the State of New Mexico.

Section 50-222 of the New Mexico Statutes provides, in effect, that any bank incorporated under the laws of that state may become a member of the Federal Reserve Bank organized within the Federal Reserve district where the applicant bank is located, and that, upon becoming such member it may exercise all of the powers of member banks conferred by the terms of the Federal Reserve Act. This State statute, however, does not permit New Mexico State banks to make loans to be insured under Title I . . . While the amendment of section 24 of the Federal Reserve Act by Section 15 (a) of the Bankhead-Jones Farm Tenant Act, as amended, permitted **National** banks to make such insured mortgage loans, it does not not authorize or empower **member** banks of Federal Reserve banks to make such insured mortgage loans. It is only when the member bank is a National bank that section 24, as so amended, broadens its lending authority. Accordingly, since the New Mexico member bank is not a National bank, the New Mexico Statute conferring upon it all powers of members of the Federal Reserve Banks does not authorize or empower that bank to make insured mortgage loans.

It is the opinion of this office, therefore, that state banks may not make real estate loans under the provisions of the Bankhead-Jones Farm Tenant Act. The only solution would be corrective legislation. If you should desire this bill, please advise us and we will assist you in preparing such legislation.