

Opinion No. 55-6330

November 29, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. F. F. Weddington, State Bank Examiner, State Banking Department, State Capitol, Santa Fe, New Mexico

You have requested an opinion of this office relative to whether or not it is legal for banks in this State to issue preferred stock or debentures. You state further that you received a request upon this question from the Independent Bankers Association.

Our research of the Statutes of the State of New Mexico reveals no prohibition of the issuance of preferred stock or debentures with the exception of Section 48-3-13, N.M.S.A., 1953 Compilation, which would apply to the issuance of bonds. Said Section of the Statute is set forth as follows:

"Borrowing money -- Pledge of securities -- Possession by bank examiner --
Emergency. -- No bank shall borrow money, and the rediscounting of paper shall not be considered as borrowing money, in excess of the amount of its capital stock and surplus, nor without the authority of the board of directors, entered of record in the minutes of the board. If any bank shall hypothecate or pledge any of the securities or other assets as collateral for money borrowed, and said bank shall be taken possession of by the state bank examiner at any time before such pledge or hypothecation shall be foreclosed, a grace of thirty (30) days after the date when the state bank examiner so takes possession shall be allowed in which such bank or the state bank examiner shall be permitted to redeem such securities or other assets by the payment of the amount due under the terms of the existing contract. However, in cases of emergency, a state bank may borrow in excess of the limitations herein prescribed, having first obtained the consent and approval of the state bank examiner."

Of necessity, whether our laws are exclusive in the premises depends on whether or not you are dealing with State Banks, National Banks, member banks of the Federal Reserve System or banks whose deposits are insured by the Federal Deposits Insurance Corporation. I interpret the request as an inquiry concerning our State Statutes; further, since the Independent Banking Association is no doubt more familiar with the provisions of the Federal Acts relative to the circumstances under which the Federal Acts apply than this office would have cause to be, this opinion will not be lengthened further by discussion of the applicability of said Federal Acts. Suffice it to say that the above stated Section of our Statutes is the only prohibition that I can find to the question proposed.

By: J. A. Smith

Assistant Attorney General