

## Opinion No. 62-83

July 5, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

**TO:** Mr. A. J. Krehbiel, Tax Commission Attorney, State Tax Commission, Santa Fe, New Mexico

### QUESTION

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Does the "deduction provision" in Section 72-6-6, N.M.S.A. 1953 Compilation relative to placing a valuation on capital stock apply to mortgage loan companies as well as to banks.

#### CONCLUSION

No.

### OPINION

#### ANALYSIS

Section 72-6-6, N.M.S.A., 1953 Compilation, enacted in 1921, provides that the stockholders of every bank, trust company or mortgage loan company shall be assessed and taxed on the value of their shares of stock. To aid the Tax Commission in determining the value of such shares of stock, each bank, trust company and mortgage loan company must submit a statement to the Commission showing the number of shares of its capital stock, the amount of its surplus, the amount of its reserve fund, the amount of its undivided profits and the amount of its legally authorized investment in real estate. The Tax Commission is then to deduct the assessed value of the real estate from the aggregate amount of the capital, surplus, reserve fund, and undivided profits. The remainder is taken as the basis for the valuation of the stockholders' shares, subject to the requirements that such stock be assessed at its true and full value.

Two years after enactment of this Section a proviso was added which stated that the amount of surplus carried by any such **bank** to an amount equal to fifty-percent of the bank's capital stock should not be considered as adding anything to the actual value of such capital stock. This proviso refers expressly only to banks.

In 1941 the proviso was amended to provide that in addition to the surplus, the reserve fund to an amount equal to fifty-percent of the bank's capital stock should not be

considered as adding anything to the value of the capital stock. In this amendment, again only banks were mentioned.

The last amendment of the proviso was enacted in 1947 and it increased to one hundred percent of the capital stock the amount of surplus and reserve that should not be considered as adding anything of actual value to the stock. Once again no mention is made of trust companies and mortgage loan companies, the proviso referring only to banks.

The question is now presented as to whether the proviso relates solely to banks or whether it also covers mortgage loan companies. That only banks are mentioned in the proviso is clear. Had the Legislature intended to make the proviso operative as to other financial institutions it would have been a simple matter to say so. The proviso is, of course, beneficial to the stockholder taxpayers included thereunder and this fact brings into operation the rule of statutory interpretation that "anyone claiming the benefit of the proviso or exemption must clearly and unmistakably establish his right to its benefits." **State v. Board of County Commissioners**, 62 N.M. 137, 306 P. 2d 259; **Lujan v. Triangle Oil Co.**, 38 N.M. 543, 37 P. 2d 797.

Legislative classification must neither be unreasonable nor arbitrary lest it violate the constitutional equal protection clause. **Edmunds v. Bureau of Revenue**, 64 N.M. 454, 330 P. 2d 131; **Amarillo-Pecos Valley Truck Lines v. Gallegos**, 44 N.M. 120, 99 P. 2d 447. But the singling out of banks as a special category of financial institutions for purposes of placing a value on its capital stock is not an unreasonable classification.

While the objects for which mortgage loan companies are organized may in some respects resemble those for which banks are organized, yet these objects are not identical and the differences permit a legislative discretion in classifying them as distinct. **Mechanics' National Bank of Trenton v. Baker**, 65 N.J.L. 113, 46 Atl. 586. This is particularly true when we consider that banks are required by statute to keep a certain amount of surplus and reserve on hand, whereas no such requirement is imposed on mortgage loan companies. Sections 48-2-14 and 48-3-1, N.M.S.A., 1953 Compilation.

Our conclusion is that banks alone are governed by the abovementioned surplus and reserve proviso of Section 72-6-6, N.M.S.A., 1953 Compilation.