

Opinion No. 65-100

June 18, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Alex G. Martinez, State Representative, 1949 Hopi Road, Santa Fe, New Mexico

QUESTION

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1. Does the Securities Act of 1965 (Chapter 312, Laws 1965) require any signature of approval by the Commissioner of Banking on securities permits after an order of approval has been issued by the Commissioner of Securities?
2. After an order has been issued by the Commissioner of Securities for the sale of securities, will the actual permit continue to be issued by the State Corporation Commission as it now is?

CONCLUSIONS

1. No.
2. Yes.

OPINION

{*171} ANALYSIS

Prior to enactment of the new Securities Act in 1965, Section 48-18-18, N.M.S.A., 1953 Compilation provided that:

"All permits issued under this act shall be issued by the corporation commission **following the approval of the state bank examiner.**" (Emphasis added).

The new Act, Chapter 312, Laws 1965, contains no requirement that the Commissioner of Banking sign a securities permit after an approval order has been signed by the Commissioner of Securities. This change was fully understood by the legislature which provided in new Section 48-18-18 that "The administration of the Securities Act of New Mexico is vested in the commissioner of securities. . . ." This section also provides that the Commissioner of Securities will determine "whether or not the offer or sale of a particular security would be lawful." In view of the changes made in the Securities Act of 1965, we conclude that the Commissioner of Banking no longer approves security permits.

Your second question asks whether security permits are to continue to be issued by the Corporation Commission. Based on Article XI, Section 6 of the Constitution, we believe the Corporation Commission should continue to issue security permits. In addition, Section 48-18-27, which was not repealed by the new Securities Act, provides that decisions of the Commissioner of Securities are subject to review by the Corporation Commission.