

Opinion No. 65-147

August 5, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Mr. W. J. Upton, Commissioner, Department of Banking, Greer Building, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. If a state or national bank applies for a small loan license under Section 48-17-32(b) N.M.S.A., 1953 Compilation (P.S.), does the Commissioner of Banking have any discretion in granting a small loan license to the applicant?
2. If the answer to the first question is yes, must the applicant pay the \$ 200 fee required by Section 48-17-33 (a), N.M.S.A., 1953 Compilation (P.S.)?
3. If the answer to the first question is yes so that the license must automatically be granted upon proper application, is the investigation provided for in Section 48-17-34, N.M.S.A., 1953 Compilation (P.S.) required?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. See analysis.

OPINION

{*246} ANALYSIS

Section 48-17-32 (a) and (b) read as follows:

"(a) Scope. No person shall engage in the business of lending in amounts of one thousand (\$ 1,000.00) dollars or less, and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than the maximums as elsewhere provided by the laws of the state of New Mexico, except as elsewhere provided in and authorized by this act [48-17-30 to 48-17-58] and without first having obtained a license from the examiner.

(b) Exemptions. **Any banking corporation** operating under the laws of the United States or the state of New Mexico **may elect to become a licensee** for operation under the terms of this act and conform to the requirements hereof by filing application hereunder, **but in the absence of such application and the granting of a license thereon no person doing business** under the authority of any law of this state or of the United States relating to banks, savings banks, industrial banks, trust companies, savings or building and loan associations, or credit unions **shall be eligible to become a licensee** under this act, nor shall this act apply to any business transacted by any such person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under a pawnbroker's license, nor to bona fide commercial loans made to dealers upon personal property held for resale. Nothing contained herein shall be construed as abridging the rights of any of those exempted from the operations of this act from contracting for or receiving interest or charges not in violation of any existing applicable statute of this state." (Emphasis added.)

The question you have posed raises the issue of whether or not subsection (b) of the quoted statutory section creates a mandatory duty on the Commissioner of Banking to grant a license to all state and national banks that may apply for a small loan license. In order to determine this issue we must ascertain whether the legislative intent is to make the granting of such a license a mandatory duty and to ascertain the intent, the purposes of the exemption must be examined. **Ross v. State Racing Commission**, 64 N.M. 478, 330 P.2d 701 (1958).

We note first that there is no restriction in the Small Loan Act which would prevent a bank from coming within the definition of a qualified applicant. Neither do we find any general restriction prohibiting banks from engaging in the small loan business. Section 48-17-31, N.M.S.A., 1953 Compilation (P.S.) defines "person" to include "individuals, copartners, associations, trusts, corporations and any other legal entity." Section 48-17-32, supra, permits any person to apply for a license as long as he meets the proposed tests. Subsection (b) of that same section grants an exemption to state or national banks. We can find no purpose for that exemption unless it is intended to exempt banks from the requirements of subsection (b) of Section 48-17-34, N.M.S.A., 1953 Compilation (P.S.). It is that subsection which requires the applicant to show first that he is financially responsible and of such character and fitness as to command the confidence of the public; second, that the allowance of the application would promote the convenience and advantage of the public; and third, that he has available for the operation {247} of the business a fixed amount of liquid assets in an amount sufficient to satisfy statutory requirements. Unless the exemption to banks makes these requirements inapplicable, the exemption has no meaning because banks can qualify under the act as applicants the same as anyone else. Absurd or unmeaningful results are not to be favored in the interpretation of statutes. **Hahn v. Sorgen**, 50 N.M. 83, 171 P.2d 308. We, therefore, conclude that state or national banks are exempt from the requirements of Section 48-17-34, supra, in the manner indicated above. Upon the filing of a proper application, therefore, the commissioner must grant the license.

Turning to your second question we note that Section 48-17-32 (b), supra, still requires a bank to submit an application for a license. We also note that Section 48-17-34, N.M.S.A., 1953 Compilation (P.S.) also requires the examiner to investigate the facts contained in the application to see that the same are not false or misleading. We are, therefore, of the opinion that this routine part of the investigation must be performed and that the fee for filing and investigation is still applicable to applications submitted by banks.