

Opinion No. 70-79

October 9, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: William C. Simms Financial Consultant New Mexico Department of Development
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QUESTIONS

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May insurance companies, telephone companies, rail carriers, air carriers, common carriers, and utility companies become stockholders in or members of a Development Credit Corporation?

CONCLUSION

Insurance companies may become both members of and stockholders in a Development Credit Corporation. Telephone companies, air carriers, rail carriers, common carriers, and utility companies may become stockholders in, but may not become members of, a Development Credit Corporation.

OPINION

{*135} ANALYSIS

In 1965, the Twenty-Seventh Legislature authorized the formation of organizations known as Development Credit Corporations. The Development Credit Corporation Act, Sections 51-23-1, **et seq.**, N.M.S.A., 1953 Compilation, grants such Corporations the power to acquire and dispose of real and personal property, to lend money and grant credit to enterprises which will assist in the state's economic development, and to borrow money and pledge securities in the name of the Corporation.

It is contemplated that banking and financial institutions, as well as insurance companies, may become members of such a Corporation by lending it money. Section 51-23-6, N.M.S.A., 1953 Compilation, declares in relevant part:

{*136} Any banking corporation, trust company, building and loan association, insurance company, or any corporation, individual partnership, foundation or institution engaged primarily in lending or investing funds may become a member of a development credit corporation. Membership is acquired by making application to the corporation to lend funds to the corporation under the provisions of the Development Credit Corporation Act [51-23-1 to 51-23-15] . . .

In defining the class of entities eligible to acquire stock in the Corporation, Section 51-23-7, N.M.S.A., 1953 Compilation, includes entities other than those specifically permitted to become members. It opens the class to such corporate groups as carriers and utilities, but requires that any organization eligible for membership in the Corporation actually become a member before acquiring any of the Corporation's stock:

51-23-7. Stock and stockholders. -- All domestic corporations, including public utility companies and insurance companies, foreign corporations licensed to do business in the state, trusts, individuals and those entities described in the preceding section [51-23-6] as eligible for membership in a development credit corporation may acquire capital stock of the corporation. However, those entities eligible for membership in the corporation are not permitted to acquire capital stock of the corporation unless they become members of the corporation.

It should be noted that any participation by any corporate entity must be supported by the powers granted to the entity in its articles of incorporation. Moreover, the Development Credit Corporation restricts member organizations both in the amount of stock they may acquire, Section 51-23-8, **supra**, and in the amount of capital they may lend the Corporation, 51-23-10, **supra**. Within these restrictions, insurance companies may first become members and may then acquire the stock of Development Credit Corporations, and telephone companies, air carriers, rail carriers, common carriers, and utility companies may acquire the stock of such Corporations.

As a final **caveat**, however, this office wishes to emphasize that its conclusions are based solely on the terms of the Development Credit Corporation Act, **supra**, and do not purport to interpret any rules or regulations which may have been promulgated by the Interstate Commerce Commission, the Federal Power Commission, the Comptroller General of the United States, or any other federal regulatory bodies. Nor do they purport to interpret the by-laws or articles of incorporation of any specific corporation.

By: Richard J. Smith

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