

Opinion No. 71-77

June 16, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Roy W. Davidson Commissioner of Banking Lew Wallace Building Santa Fe, N.M. 87501

QUESTIONS

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Assuming that its application is satisfactory in all other respects and that the criterion prescribed by parts A and C of Section 48-15-61, NMSA, 1953 Comp. are satisfied, can a state chartered savings and loan association, whose accounts are insured by the Federal Savings & Loan Insurance Corporation, which is a member of the Federal Home Loan Bank and which maintains its principal office in Las Cruces, New Mexico, be permitted to establish and maintain a branch office in Truth or Consequences, New Mexico (a distance of approximately 62 miles)?

CONCLUSION

Yes.

OPINION

{*112} ANALYSIS

We review briefly the factual context of the above question. The Mutual Building & Loan Association of Las Cruces is a state chartered association, a member of the Federal Home Loan Bank, and its deposit accounts are insured by the Federal Savings & Loan Insurance Corporation. The association maintains its principal office at Las Cruces, New Mexico, and it has applied to the State Savings & Loan Supervisor for permission to establish and maintain a branch office at Truth or Consequences, New Mexico. The distance between Las Cruces and Truth or Consequences is approximately 62 miles. There is no savings and loan association office, principal or branch, located in Truth or Consequences or in the {*113} Sierra County trade area at this time. Moreover, there is no savings and loan association principal office within 50 miles of Truth or Consequences.

All matters relating to state chartered savings and loan associations are controlled by the New Mexico Savings & Loan Act -- Sections 48-15-45 **et seq.**, NMSA, 1953 Comp. (Laws 1967, Chap. 61), which was enacted at the 1967 session of the Legislature and became effective on July 1, 1967. Two provisions of this act are relevant to a

determination of the matter in question. Section 48-15-61D, NMSA, 1953 Comp. (1969 P.S.) provides in material part that:

Branches of a parent association authorized under the savings and loan act may do business the same as the parent association, but branches must be located within a radius of fifty (50) miles from the principal office of the parent association, within the State of New Mexico

In contrast, however, Section 48-15-94, NMSA, 1953 Comp. (1969 P.S.) provides that:

Powers and privileges of associations. -- **A. Notwithstanding any other provision of the Savings and Loan Act** (48-15-45 to 48-15-142), every company, association or corporation licensed under the provisions of the savings and loan laws of this state whose accounts are insured by the federal savings and loan insurance corporation or its successor, and which is a member of a federal home loan bank or its successor, shall possess at least the same rights, powers, privileges, immunities and exceptions which are possessed by any federally chartered association.

B. When more permissive lending and investment privileges and provisions regarding payments of interest and dividends or other powers, privileges, immunities and exceptions are extended to federally chartered associations, **the same shall be extended to every company, association or corporation licensed under the provisions of the Savings and Loan Act** whose accounts are insured by the federal savings and loan insurance corporation or its successor and which is a member of a federal home loan bank or its successor. (Emphasis added).

Clearly, the prefatory clause of Section 48-15-94A, NMSA, 1953 Comp., resolves any possible conflict between the two sections and accords primacy to Section 48-15-94, NMSA, 1953 Comp. That is to say, "notwithstanding any other provisions of the Savings and Loan Act", such as the limitation expressed in Section 48-15-61D, NMSA, 1953 Comp., the provisions of Section 48-15-94, **supra** are controlling.

Examination of Section 48-15-94, **supra**, indicates that the Legislature clearly intended by part A to incorporate by reference and to extend to federally insured state associations all federally declared rights, powers, privileges, immunities and exceptions then possessed by federally chartered associations, and that, by part B, the Legislature intended to incorporate by reference and to extend to federally insured **state** associations all additional rights, powers, privileges, immunities and exceptions that might be bestowed upon federal associations by Congress or the Federal Home Loan Bank in the **future**. Laws authorizing federal and state savings and loan associations to establish branches and prescribing the distance within which they may do so, confer "rights, powers, privileges, immunities and exceptions" upon such associations. While not specifically declared in this jurisdiction, there can be no question but that the Legislature can, by a statute, incorporate by reference and confer upon a statutory subject the rights, powers, privileges, immunities and exceptions declared by **then existing federal law** without the necessity of their definitive expression. **Brock v.**

Superior Court, 9 Cal. 2d 291, 71 P.2d 209, 114 A.L.R. 127; **Ex Parte Lasswell**, 1 Cal. App. 2d 183, 36 P.2d 678; **Florida Industrial Comm. v. State ex rel Orange State Oil Co.**, 155 Fla. 772, 21 So.2d 599; **Florida Industrial Comm. v. Peninsular Life Ins. Co.**, 152 Fla. 55, 10 So.2d 793; **Hutchins v. Mayo**, Fla. 197 So. 495; **Dawson v. Hamilton**, Ky. 314 SW2d, 532; **State v. Webber**, 125 Me. 319, 133 A.738; **State v. Gauthier**, 121 Me. 522, 118 A. 380, 26 A.L.R. 652; **State v. Intoxicating Liquors**, 121 Me. 438, 117 A. 588; **In re {*114} Opinion of the Justices**, 239 Mass. 606, 133 N.E. 453; **Dearborn Independent, Inc. v. City of Dearborn**, 331 Mich. 447, 49 N.W.2d 370; **Smithberger v. Banning**, 129 Neb. 651, 262 N.W. 492, 100 A.L.R. 686; **Holgate Bros, Co. v. Bashore**, 45 Dauph. Co. Pa. 274; **State v. Urquhart**, (Wash.) 310 P.2d 261; Annotation -- "Permissible Limits of Delegation of Legislative Powers," 79 Law Ed. 474 at 502; 16 Am. Jur. 2d, Constitutional Law, Sec. 245.

Less certain, however, and also unresolved in this jurisdiction, is the question of whether the Legislature can incorporate by reference the provisions of **future** federal law, but we need not decide this question in this opinion. However, see **People ex rel. Pratt v. Goldfogle**, 242 N.Y. 277, 151 N.E. 452; **Commonwealth v. Alderman**, 275 Pa. 483, 119 A. 551; Annotation, 133 A.L.R. 401; 16 Am. Jur. 2d, Constitutional Law, Sec. 245.

Inasmuch as Section 48-15-94A, NMSA, 1953, accords to federally insured **state chartered** savings and loan associations the ". . . same rights, powers, privileges, immunities and exceptions" as to branch offices possessed by federally chartered associations at the time the New Mexico Savings and Loan Act was passed in 1967, the final matter to be determined is what those rights, etc. were in 1967.

By resolution adopted on September 10, 1965, the Federal Home Loan Bank Board extended the permissible branching distance of a federal savings and loan association from its principal office to 75 miles. 30 Fed. Reg. 11981 (published Sept. 18, 1965). See also 12 CFR Sec. 556.5 (32 Fed. Reg. 20630, published on December 21, 1967). **This 75 mile distance limitation continued until December 7, 1968**, when the Federal Home Loan Bank Board amended its prior resolution and regulation by extending the distance to 100 miles from a federal association's principal office. 33 Fed. Reg. 18229. The 100 mile limitation is still in effect at this time. But, as previously stated, our opinion is based **only** on the 75 mile provision in effect when Section 45-15-94, **supra**, was enacted.

Inasmuch as the Mutual Building and Loan Association of Las Cruces is a member of the Federal Home Loan Bank and its deposit accounts are insured by the Federal Savings and Loan Insurance Corporation, it clearly appears that such association may be permitted, pursuant to the New Mexico Savings and Loan Act, to establish and maintain a branch office at Truth or Consequences, New Mexico, which is approximately 62 miles from Las Cruces, just as a federally chartered savings and loan association would be so permitted.

By: Oliver E. Payne

Deputy Attorney General