

## **Opinion No. 79-22**

May 7, 1979

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Scott Rutledge, Assistant Attorney General

**TO:** Mr. Jan Alan Hartke, State Treasurer, Land Office Building, Post Office Box 608, Santa Fe, New Mexico 87503

### **PUBLIC RECORDS**

The State Treasurer may not examine confidential reports made by the Financial Institutions Division on the financial condition of New Mexico banks and savings and loan institutions.

### **QUESTIONS**

Does the New Mexico State Treasurer, by reason of his maintenance of large deposits of public funds with various New Mexico financial institutions, have access to information in the files of the financial institutions division of the Department of Commerce and Industry regarding the financial condition of the depository institutions?

### **CONCLUSIONS**

No.

### **ANALYSIS**

Confidentiality of information about banks, acquired by the financial institutions division in the discharge of its duties, is assured by Section 58-1-38 NMSA 1978. The statute states in pertinent part:

"Neither the commissioner [director of the financial institutions division of the commerce and industry department], nor his deputies or employees, . . . shall divulge any information acquired by them in the discharge of their duties, except insofar as the same may be rendered necessary by law. The commissioner [director] may exchange information as to the conditions of banks with the United States comptroller of the currency, federal deposit insurance corporation, federal reserve banks, and banking departments of other states. Anyone who violates the provisions of this section shall be deemed guilty of a misdemeanor."

In addition, confidentiality of information about savings and loan associations, acquired by the savings and loan bureau of the financial institutions division in the discharge of its duties, is assured by Section 58-10-74 NMSA 1978:

"The supervisor, deputy and his employees shall not divulge any information acquired by them in the discharge of their duties under the Savings and Loan Act except as necessary by law or under order of court. The supervisor may furnish information as to the condition of any association to the federal home loan bank board of Washington, D.C., or the federal savings and loan insurance corporation, any regional federal home loan bank or other savings and loan association department of any other state."

These sections specify certain federal and state officials with whom the director of the financial institutions division may exchange information on the condition of banks and savings and loan associations. Principles of statutory construction would indicate that officials not listed in the statute were not intended by the legislature to {<sup>\*54</sup>} have access to such information. See **In the Matter of the Attorney General of New Mexico**, 2 N.M. 49 (1881); **Tietzel v. Southwestern Construction Co.**, 43 N.M. 435, 94 P.2d 972 (1939); and 2A Sutherland, **Statutes and Statutory Construction** (4th Ed. 1972), Section 47.23.

In some cases, courts have held that statutes providing for confidentiality of bank examiner's reports do not prevent the admission of such reports as evidence in litigation. See **In Re Culhane**, 269 Mich. 68, 256 N.W. 807 (1934); and **Werner v. Crippen**, 245 App. Div. 363, 282 N.Y.S. 722 (1935), aff'd 270 N.Y. 535, 200 N.E. 305. However, we find no authority which would deny legislative power to prohibit the release of information acquired by bank examiners and regulators to other officials of the executive branch of government. Rather, in **Bank of America National Trust and Savings Association v. Douglas et al.**, 105 F.2d 100 (U.S.C.A., D.C., 1939), the court held that in the absence of a statute prohibiting the release of bank examination reports by the Secretary of the Treasury Department, such reports could be furnished to the Securities and Exchange Commission. The holding suggests that a statute prohibiting the release of the reports would have prevented the exchange between governmental agencies.

In conclusion, Sections 58-1-38 and 58-10-74, **supra**, must be interpreted as prohibiting the financial institutions division from furnishing information on the financial condition of New Mexico financial institutions to the State Treasurer, absent express statutory authorization for such release. Without such express authorization, the Treasurer is not legally entitled to obtain such information.

## ATTORNEY GENERAL

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