

Opinion No. 81-20

August 6, 1981

OPINION OF: Jeff Bingaman, Attorney General

BY: Jill Z. Cooper, Deputy Attorney General

TO: Bruce R. Kohl, Chief, Securities Bureau, Financial Institutions Division, Lew Wallace Building, Santa Fe, New Mexico 87503

FINANCIAL INSTITUTIONS

Synopsis: The responsibility for issuing permits for the sale of securities is properly vested in the chief of the securities bureau pursuant to the authority granted by Section 58-13-10 NMSA 1978 to approve the issuance of permits.

QUESTIONS

Where the chief of the Securities Bureau has entered an order authorizing the issuance or sale of a security pursuant to Section 58-13-10 NMSA 1978 of the Securities Act of New Mexico, does he then have the exclusive authority to issue the permit for such issuance or sale?

CONCLUSIONS

Yes. Opinion of the Attorney General No. 65-100, dated June 18, 1965, is hereby expressly overruled insofar as it is inconsistent with this conclusion.

ANALYSIS

Section 58-13-3(A) NMSA 1978 provides in relevant part that . . . "[t]he administration of the Securities Act of New Mexico is vested in the chief of the securities bureau of the financial institutions division of the commerce and industry department. . ." Further, insofar as the Securities Act of New Mexico (Act) refers to the issuance of permits for the sale of securities, Section 58-13-10 NMSA 1978 provides that once the chief of the securities bureau has determined that the proposed sale or issuance of a particular security should be allowed he "shall enter an order approving the issuance of a permit authorizing the sale of the securities as thereon provided in this state in such amounts and for such considerations and upon such terms and conditions as the chief may provide."

OPINION

Prior to 1965, the Act had provided that:

"All permits issued under this Act shall be issued by the Corporation Commission following the approval of the State Bank Examiner. Laws 1955, Chapter 131, Section 3."

When this language was repealed by Laws 1965, Chapter 312, Opinion of the Attorney General No. 65-100, dated June 18, 1965, concluded that:

"Based on Article XI, Section 6 of the Constitution, we believe the Corporation Commission should continue to issue security permits. In addition, [Section 58-13-37 NMSA 1978], which was not repealed by the new Securities Act, provides that the decisions of the Commissioner of Securities are subject to review by the Corporation Commission."

{*254} This conclusion, however, does not follow from the authority cited in the Opinion.

Article XI, Section 6 empowers the Corporation Commission to issue "all charters for domestic corporations and amendments or extensions thereof, and all licenses to foreign corporations to do business in this state." The powers of the Corporation Commission as defined by Article XI, Section 6 are limited and would not, therefore, include the power to issue permits for the sale of securities. The Supreme Court has held, for example, "that the power and jurisdiction committed to the State Corporation Commission to issue charters to domestic corporations must have been intended to include only such domestic corporations as require, under the law, the issuance to them of charters, and does not include corporations . . . [organized for the purpose of exercising a public function]." **In Re Dexter-Greenfield Drainage District**, 21 N.M. 286, 304-305, 154 P. 382 (1915).

Further, the Supreme Court has held that Article XI, Section 6 does not preclude the legislature from designating the office of the State Bank Examiner as the body responsible for making determinative findings, preliminary to the issuance of charters to state banks. **First Thrift and Loan Association v. State**, 62 N.M. 61, 70-71, 304 P.2d 582 (1956). Similarly, Article XI, Section 6 does not preclude the legislature from designating the Securities Bureau as the body to issue permits for the sale of securities.

Although Section 58-13-10 NMSA 1978 only expressly directs the chief to enter an order **approving** the issuance of such permits, in the absence of any statutory authority to the contrary, it necessarily follows that the chief is implicitly directed to **issue** the permit as well. The authority of an administrative agency is not limited to those powers expressly granted by statute but includes all powers that may be fairly implied therefrom. **Wimberly v. New Mexico State Police Board**, 83 N.M. 757, 497 P.2d 968 (1972).

Section 58-13-37 NMSA 1978 provides that:

"The decision of the chief shall be subject to review and any party aggrieved by such decision may within ten days from the date of said decision appeal therefrom to the corporation commission. . . ."

This authority of the Corporation Commission to review a decision of the chief as to the issuance of a permit to sell securities does not constitute authorization for the Corporation Commission to issue a permit which has been approved by the chief pursuant to Section 58-13-10 NMSA 1978. Indeed, unless an aggrieved party appeals, the Corporation Commission would have no basis for exercising any authority with respect to a decision of the chief.

Being clear and unambiguous, Section 58-13-37 NMSA 1978 should be given effect as written. **State v. Elliott**, 89 N.M. 756, 557 P.2d 1105 (1977). Nothing in that section would suggest that the authority of the Corporation Commission to review decisions confers on the Commission the authority to issue permits.

In short, with the repeal of Section 48-18-18 NMSA 1953, the authority of the Corporation Commission to issue permits for the sale of securities was cancelled. The responsibility for issuing such permits is properly vested in the chief of the Securities Bureau pursuant to the authority granted by Section 58-13-10 NMSA to approve the issuance of permits.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General