

## **Opinion No. 81-22**

September 2, 1981

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

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Mr. Snider Campbell, Savings and Loan Supervisor, Lew Wallace Building, Santa Fe, New Mexico 87503

### **CORPORATION; FINANCIAL INSTITUTIONS**

Synopsis: When the assets of a savings and loan association are liquidated by a receiver pursuant to an order of the court, the association is terminated and its charter or certificate of authority to transact business is terminated as well.

### **FACTS**

Two savings and loan associations have been placed in receivership by order of the District Court pursuant to Section 58-10-85 NMSA 1978 of the Savings and Loan Act. In accordance with the court order, the receiver is in the process of liquidating all assets of the associations and has obtained the approval of the supervising District Court to sell the "charters" which were issued when the associations began operation.

### **QUESTIONS**

Does the "charter" of a savings and loan association which has been placed in receivership and is being liquidated remain a valid franchise entitling a subsequent purchaser thereof to engage in the savings and loan business in accordance with the Savings and Loan Act, Section 58-10-1 **et seq.**, NMSA 1978?

### **CONCLUSIONS**

No.

### **ANALYSIS**

A savings and loan association subject to the provisions of the Savings and Loan Act, Section 58-10-1 **et seq.**, NMSA 1978, may not begin operation in this state until it has been authorized to do so in accordance with the provisions of the Act. Pursuant to Section 58-10-12, if the savings and loan supervisor can make certain findings based on data submitted with the application for a charter, he shall approve the articles of incorporation, issue a certificate of authority for the association to transact business, and upon acceptance and approval of the articles of incorporation by the corporation

commission, "the proposed association is a corporate body with perpetual existence unless terminated by law. . . ."

## OPINION

Thus, approval of an application for a charter does not result in the issuance of a "charter" as such, but rather in an authorization to transact business. The findings which the savings and loan supervisor is required to make pertain to such matters as compliance with filing requirements; compliance with minimum stock, paid-in surplus and operating fund requirements for the specific population area; the names of the organizers and directors and satisfactory evidence of their good character and financial standing; and a showing that the economic climate of the area in which the {259} association is to operate supports a public need for the association without harm to other associations.

As the authority of an association to transact business is based solely on particular findings applicable to a specific association, it has no legal relevance to any other association. Where a charter is actually issued, it has been held to constitute authority to operate only that institution which it describes. **Coahoma Bank and Trust Co. v. Bowen**, 218 So. 2d 868 (1969).

In a proceeding to liquidate the assets of a bank, Section 58-1-75 NMSA 1978 provides that after the assets have been distributed and the director is discharged of any liability in connection with the liquidation, "the charter shall be cancelled." Although there is no provision relating to cancelling a savings and loan association charter other than pursuant to Section 58-10-14 for failure to commence business as required by the Savings and Loan Act, it necessarily follows that such a "charter" must be cancelled when the association can no longer carry out its purpose. Under common law, "[s]uffering any act to be done which destroys the end and object for which the corporation is instituted is equivalent to a direct surrender of its charter." **State v. Real Estate Bank**, 5 Ark. 595, 607 (1843).

In short, when the assets of a savings and loan association are liquidated by a receiver pursuant to an order of the court, the association is terminated and its "charter" or authority to transact business is terminated as well. Therefore, no "charter" or valid franchise remains entitling a subsequent purchaser to engage in the savings and loan business.

## ATTORNEY GENERAL

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