

Opinion No. 82-19

November 1, 1982

OPINION OF: Jeff Bingaman, Attorney General

BY: Douglas Meiklejohn, Deputy Attorney General

TO: A. M. Swarthout, Director, Financial Institutions Division, Commerce and Industry Department, State of New Mexico, Lew Wallace Building, Santa Fe, New Mexico 87503

FINANCIAL INSTITUTIONS

A savings and loan association's special reserves established pursuant to Section 58-10-28 NMSA 1978 are not to be included within the association's net worth as defined by Section 58-10-2 NMSA 1978.

QUESTIONS

Does the net worth of a savings and loan association as defined by Section 58-10-2 NMSA 1978 include special reserves established pursuant to Section 58-10-28 NMSA 1978?

CONCLUSIONS

No. This Opinion overrules Opinion of the Attorney General Number 68-56, dated May 31, 1968.

ANALYSIS

Section 58-10-2 NMSA 1978 of the New Mexico Savings and Loan Act, Sections 58-10-1 **et seq.** NMSA 1978, defines the net worth of a savings and loan association as "the sum of all reserve accounts, undivided profits, surplus, capital stock and any other nonwithdrawable accounts".

OPINION

Section 58-10-28 NMSA 1978 of the Act provides:

"After a determination of value, the [savings and loan] supervisor may order that assets in the aggregate, to the extent that the assets exceed appraised value, be charged off, or that a special reserve or reserves equal to the depreciation in value be set up by transfers from surplus, undivided profits or reserves."

This section provides two alternative mechanisms for accounting for a loss sustained by a savings and loan association due to depreciation in the value of its assets. The first

alternative is for the association to charge off the amount of the loss. Such a charge would be accounted for as an operating loss, and the association's net worth would therefore be reduced by the amount of the loss. The second alternative is for the association to establish a special reserve in the amount of the loss by transferring that amount from surplus, undivided profits, or reserves. Because those three accounts are included in the association's net worth as defined by Section 58-10-2, any transfer of funds out of those accounts must result in a corresponding reduction in the association's net worth. If the amount of the loss is transferred to a reserve which is then included in the computation of the association's net worth, however, the association's net worth would not be reduced even though a loss had been sustained. Such a computation would render the second alternative in Section 58-10-28 ineffective. It would also create an ambiguity in that Section and make it nonsensical, because the first alternative would require a reduction in net worth, but the second alternative would not.

Since the Legislature is presumed not to intend to enact useless statutes and {³¹⁴} because statutes are to be construed so as to give effect to all of their provisions (**State ex rel. Bird v. Apodaca**, 91 N.M. 279, 573 P.2d 213 (S. Ct. 1977)), it is therefore our opinion that the special reserves established by Section 58-10-28 are not to be included within an association's net worth as defined by Section 58-10-2.

This conclusion is inconsistent with Opinion of the Attorney General Number 68-56. That Opinion interpreted the phrase "all reserve accounts" in the Section 58-10-2 definition of net worth to include the reserves established pursuant to Section 58-10-28 on the grounds that the phrase "all reserve accounts" is not ambiguous, and under rules of statutory construction, it is therefore not subject to interpretation. Although that is a principle of statutory construction, Opinion 68-56 failed to consider the effect of such an interpretation on Section 58-10-28. It is also a rule of statutory construction that statutes are to be construed harmoniously so as to give effect to all of their provisions (**State ex rel. Bird v. Apodaca, Supra**) and the interpretation given to Section 58-10-2 by Opinion 68-56 requires either that the language in Section 58-10-28 which excludes special reserves from net worth be ignored, or that the two alternative accounting mechanisms in that Section produce different results. Since Section 58-10-2 must be construed consistently with, and so as to give effect to, Section 58-10-28, Opinion 68-56 should not be followed. We therefore hereby overrule it.

ATTORNEY GENERAL

Jeff Bingaman, Attorney General