**Opinion No. 87-06**

February 19, 1987

**OPINION OF:** HAL STRATTON, Attorney General

**BY:** Scott D. Spencer, Assistant Attorney General

**TO:** Mr. James W. Stretz, Director, Financial Institutions Division, Regulation and Licensing Department, State of New Mexico, Bataan Memorial Building, Room 137, Santa Fe, New Mexico 87503 RE: Trust Companies

## QUESTIONS

1. Can the Financial Institutions Division issue a trust company certificate to a New Mexico Corporation if all of its common stock is owned by an out-of- state bank holding company?

2. If a trust certificate is issued, can the resulting trust company operate in the main office or branches of banks owned by the holding company?

## CONCLUSIONS

1. Yes, provided the corporation complies with all requirements of the Trust Company Act, Sections 58-9-1 to 58-9-13 NMSA 1978.

2. Yes, pursuant to Section 58-9-1.1G NMSA 1978.

## ANALYSIS

The Trust Company Act, Section 58-9-1 et seq. NMSA 1978, provides that no person or corporation shall engage in the trust business without first obtaining a certificate from the Director of the Financial Institutions Division. There are several enumerated exceptions, none of which apply in this case. Assuming that the corporation is duly incorporated and meets all the requirements of the Act, there are no state laws restricting certification based upon ownership of a majority share of stock of the corporation.

Not only does state law fail to prohibit an out-of-state holding company from owning a New Mexico trust company, federal law might prohibit such a restriction.

In Lewis v. B.T. Investment Managers Inc., 447 U.S. 27, (1980), the Supreme Court of the United States held that a Florida statute prohibiting out-of-state banks, trusts, and bank holding companies from owning in-state investment advisory services violated the federal commerce clause. U.S. Const. Art. 1, Sec. 8, cl. 3. Section 3D of the Bank Holding Company Act of 1956, 12 U.S.C.S. § 1842(d)), prohibits the Board of

Governors of the Federal Reserve System from approving an application by a bank holding company to acquire out-of-state banks unless that acquisition specifically is authorized by the law of the state in which the proposed acquisition is located. The Court held that this section applies to holding company acquisitions of banks and does not authorize additional state regulation of bank company activities. The Lewis case suggests that a state may not prohibit a bank holding company located outside of the state from owning all of the common stock of a duly incorporated and certified trust company located within the state of New Mexico, provided that it is authorized to own a trust company.

With respect to your second question, Section 58-9-8.1 NMSA 1978 regulates the establishment of branch offices by trust companies. Subsection G of that section provides as follows:

The furnishing of trust services by a trust company affiliate of a bank holding company in a building in which any banking subsidiary of the bank holding company has its principal office or a manned branch office shall not constitute the operation of a branch office as prohibited by this section. As used in this subsection:

(1) "banking subsidiary" means a bank eighty percent or more of the voting shares of which are owned by the bank holding company; and

(2) "affiliate", with respect to a bank holding company, means any company eighty percent or more of the voting shares of which are owned by the bank holding company....

The legislature apparently anticipated a situation where a bank would own a controlling interest in shares of trust companies. Therefore, it is our opinion that if an out-of-state bank holding company owns more than eighty percent of the voting shares of a trust company that company may operate in any building in which a banking subsidiary of the holding company operates within this state.

**ATTORNEY GENERAL**

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