

Opinion No. 12-871

March 11, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Howell Earnest, Traveling Auditor and Bank Examiner, Santa Fe, N. M.

TRAVELING AUDITOR.

Traveling Auditor may make examination of mercantile corporations doing a banking business.

OPINION

{*15} I have received your letter of the 11th inst. asking my opinion as to the jurisdiction of your office over unincorporated firms or others doing a banking business in the state.

Your jurisdiction over banks is defined in Chapter 54 of the Laws of 1903, and does not extend beyond corporations created under the laws of the territory. Chapter 109 of the Laws of 1903, to which you make reference, does not extend your jurisdiction in any way, as that merely provides for the creation of mercantile corporations which may be allowed to transact a general banking business in addition to mercantile business, but I am of opinion that, in order to transact such banking business they must specify that as one of the purposes of the corporation in the certificate to be filed as required by law, or in an amendment to an already existing certificate of incorporation. This would certainly bring such corporations within the category of the corporations mentioned in Section 6 of Chapter 54 of the laws of the same year.

Section 254 of the Compiled Laws of 1897, makes it unlawful for any person or persons, companies or associations other than national banks, to engage in or carry on the business of banking in New Mexico, unless they have complied with the provisions of the act of which said section was a part, originally passed in 1884, and also that any and all contracts made by or with any person or persons, or associations doing business as bankers, contrary to the provisions of the act, should be null and void.

The provisions of that act required the incorporation of banks, as such, for the purpose of doing banking business. Chapter 109 merely adds to the kind of corporations that may be permitted to do a banking business, and the corporations therein provided for would come under your jurisdiction, the same as any other banking corporations.

While the said Section 254 makes it unlawful for persons, companies or associations to carry on the business of banking, unless incorporated for that purpose, yet the only penalty denounced is that contracts made by or with persons doing business as bankers in violation of that statute, shall be null and void. The public ought to be warned against doing any banking business with any such unauthorized persons or companies,

but it is not imposed upon you as an official duty that you should give such warning. At the same time, there would be no impropriety in your calling public attention, and the attention of any violators of this statute, to the condition of {^{*}16} the law, and you might cause this letter to be published at any time when you think the public demands such publication.