

Opinion No. 13-1007

April 7, 1913

BY: FRANK W. CLANCY, Attorney General

TO: State Corporation Commission, Santa Fe, N. M.

BANK AND TRUST COMPANIES.

Bank and trust companies may dissolve under provisions of Section 35, in connection with Section 131, Chapter 79, Laws of 1905. Must have capital stock required by Chapter 52, Laws of 1903, as amended by Chapter 133, Laws of 1909.

OPINION

{*171} Your letter of the 25th of March was received at this office after I had gone to Lincoln County to assist in the prosecution of a murder case, and since my return, on Thursday last, I have not been able to give it any attention until now.

With that letter you transmitted another from Mr. H. H. Hendrick, cashier of the First State Bank & Trust Company of Roswell, from which it appears that said corporation is now considering a dissolution and incorporation with a less amount of capital stock, and he asks, first, whether his corporation can dissolve under the provisions of Section 35 taken in connection with Section 131 of Chapter 79 of the Laws of 1905. The provisions of the act are made applicable to corporations incorporated under statutes in relation to banks and to trust companies, and I can see no reason why this does not operate to authorize a dissolution under Section 35. I believe {*172} there is no specific provision in other corporation acts relating to banks and trust companies, as to dissolution, which would be inconsistent with said Section 35.

Mr. Hendrick next asks whether trust companies could be incorporated in pursuance of subdivision 4 of Section 131 of Chapter 79 of the Laws of 1905, with less than the amount of capital stock required by Chapter 52 of the Laws of 1903 and the amendment thereto in Chapter 133 of the Laws of 1909. While subdivision 4 of said Section 131 authorizes the incorporation of trust companies under the act of 1905, yet I cannot believe that it was intended thereby to abrogate the requirements and restrictions contained in the other acts above referred to. It was clearly the intention of the legislature, carefully, to require certain amounts of capital stock for such companies and that intent appears to have been still in existence in 1909, four years after the act of 1905 was adopted. I believe it would not be safe to disregard the requirements of the acts of 1903 and 1909.

Mr. Hendrick also asks, if it is decided to dissolve their present corporation and again incorporate, whether it can be done so that they can continue the use of their present corporate name, and it is as to this you specially express some doubt. It is true that

Section 7 of the Act of 1905 forbids the assumption of a name already in use by another existing corporation, but I can see no good reason why you should not permit the use of the same name in a case like the present one, when the proceedings under Section 35 of the act have so far progressed as to show the certainty of the dissolution of the old corporation. That is to say, when the certificate is filed with you, showing the consent of two-thirds, or, of all the stockholders to the dissolution, I believe you could then consider the old corporation as no longer in existence and could permit the new one to use the same name as the old one.

I return Mr. Hendrick's letter, as requested.