

Opinion No. 14-1169

March 12, 1914

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: The State Corporation Commission, Santa Fe, New Mexico.

TRUST COMPANY.

A trust company cannot exercise any other powers than those enumerated by Chapter 52 of the laws of 1903.

OPINION

{*26} We have your letter of the 11th instant asking our opinion concerning various matters connected with the proposed articles of incorporation of The United States Bank & Trust Company.

Chapter 52 of the laws of 1903 is a special act referring to trust companies. Chapter 79 of the laws of 1905 is a general act referring to corporations generally. Section 131 of the latter act provides that the provisions of the former act are applicable to the provisions of the special act, and that a trust company may incorporate under the general act. But when a trust company does incorporate under the provisions of the general act the provisions of the special act in reference to powers, organization, etc., are applicable to the incorporation. The special and general acts are to be construed as one act, and it appears that the provisions of the special act prevail over the provisions of the general act when there are any inconsistencies between the two. Construing the general and special acts together, our conclusion is that a trust company may possess the specially enumerated powers contained within the special act, together with the general powers contained within the provisions of the general act. However, when the acts are construed together it is apparent that a trust company, whether organized under the general or special act, or both, cannot exercise any other powers than those specially enumerated in the special act, together with the powers incident to the carrying out of those specially enumerated powers and the powers and rights given under the general act, such as, to have a corporate seal, hold, own and dispose of property, etc. Powers which are vested in manufacturing and industrial corporations for the carrying out of manufacturing and industrial objects cannot be exercised by a trust {*27} company, because not incident and necessary to the carrying out of the objects of a trust company. The object of a trust company is to carry on a trust business as outlined in the special act. It has no other powers, except incidental powers and the general powers specified in Sections one and two of Chapter 79 of the laws of 1905.

It appears that the proposed corporation intends to use the name, "The United States Bank & Trust Company." It also appears that there is a de jure corporation in existence in this state bearing the name "United States Bank & Trust Company." Section 1 of

Chapter 133 of the laws of 1909 prohibits the proposed corporation using that name under these circumstances. No doubt the object of that provision was to prevent fraud and avoid confusion. In a proper case and under the conditions existing in regard to the proposed incorporation of this company the law works a hardship, no doubt, but notwithstanding this we are not prepared to say that the commission may set aside the law to avoid the result.

Chapter 11 of the laws of 1909 applies to trust companies, as well as to every kind of a corporation.

Section 21 of Chapter 52 of the laws of 1903 applies only to building and loan associations.