

Opinion No. 15-1513

May 4, 1915

BY: H. S. CLANCY, Assistant Attorney General

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

Procedure upon amendment to articles of incorporation of a state bank.

OPINION

{*101} At your request I have carefully considered the letter of Messrs. Marron and Wood of Albuquerque, together with accompanying certificate of amendment to the Articles of Incorporation of the Morris State Bank of Gallup. You desire to be informed by this office {*102} whether the certificate referred to should be acknowledged by the officers of the corporation.

A reading of Sec. 30, Chap. 79 of the Laws of 1905, seems to indicate that such a certificate must be filed in your office, and such being a fact, that the same must be signed by the President and Secretary of the corporation under its corporate seal, and acknowledged as in the case of deeds of real estate. In addition to this certificate, which in the present case would appear to be as required by law, with the exception of the acknowledgment, there must be filed the written assent of two-thirds in interest of each class of stockholders, or the affidavit of the President and Secretary that such assent was given to the amendment. This last provision was undoubtedly inserted in the law to avoid the actual signing of a written assent to the amendment by each class of stockholders, and to substitute therefor the affidavit of the President and Secretary that such assent was given. In other words, a "written assent" can be filed or the affidavit of the President and Secretary as a substitute therefor.

The affidavit attached to the articles of incorporation in question would seem to be quite sufficient, but it cannot be considered as a substitute for an acknowledgment to the certificate.