

Opinion No. 15-1587

July 16, 1915

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. L. B. Wooters, Assistant Bank Examiner, Santa Fe, N. M.

Mercantile companies doing a banking business must set apart at least \$ 25000.00 as capital.

OPINION

{*160} Referring further to your letter of July 15 in regard to the effect of Chapter 67 of the Laws of 1915, designated as the banking act, upon mercantile companies doing a banking business, under the authority of Chapter 109 of the Laws of 1903, compiled as Sections 456 to 458, Codification 1915, we are of the opinion that Section 9 of the former act makes it necessary for mercantile companies doing a banking business under the provisions of the latter act, to set apart and keep separate at least the sum of \$ 25,000 as capital for banking as directed by Section 8 of the banking act.

Under the provisions of the act which permits mercantile corporations to engage in banking business, there is no designation of any particular part of the capital stock of such companies to be set apart for the purpose of the banking business permitted by the {*161} act, and it would seem that it was the intention of the legislature in Section 9 of Chapter 67 of the Laws of 1915, to remedy what perhaps may have been an oversight or a defect in the former legislation. We are persuaded to this holding not only from the construction of the new banking act, but also by reason of the fact that banking corporations themselves are compelled by law to have a certain capital to which the creditors of the institution may look for liquidation of their liabilities, and there would seem to be no just reason why a mercantile company engaged in the business of banking, should not be likewise compelled to have set apart a sufficient amount of its capital stock for the payment of the liabilities created by reason of the banking business.

While we feel that the construction of the act as above set out may be somewhat harsh and be the cause of some difficulty to some of the smaller mercantile institutions engaged in the banking business, still we are unable to find anything in the banking or corporation laws of the state which would justify any opinion other than that above rendered, and we are compelled to hold as above indicated by reason of the wording of the banking act.

It might be argued that the wording of the first paragraph of Section 9 would indicate that mercantile corporations engaged in the business of banking should receive the same consideration in the setting apart of a part of the capital stock for banking business as are given to banking corporations by Section 8 in the required increase of their capital stock up to the sum of \$ 25,000, still a reading of the paragraph in question

is persuasive of the fact that the reference to Section 8 is only for the purpose of specifying the amount of the capital to be set aside for banking and not to the time within which the provision becomes effective. It is our opinion, therefore, that mercantile corporations engaged in banking business should be compelled to set aside and keep separate the sum of \$ 25,000 for the purpose of conducting the banking business carried on in connection therewith.

The question in your letter was general as regarding the effect of the new banking act upon mercantile corporations doing a banking business under the provisions of Chapter 109 of the Laws of 1903, but from your conversation with the writer we understand that you desire an opinion only upon the effect of that part of the act which requires the setting apart and keeping separate of a part of the capital stock of mercantile corporations engaged in banking for the purpose of doing such a banking business, and so have confined our reply to that question.