

## Opinion No. 15-1681

November 16, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Edwin Mechem, Alamogordo, New Mexico.

**A commercial bank, organized under the Laws of 1915, need not publish its articles of incorporation.**

### OPINION

{\*252} I have received your letter of the 12th inst. inquiring whether in my opinion it is necessary for a commercial bank, organized under Chapter 67 of the Laws of 1915, to publish its Articles of Incorporation as required by the general incorporation act.

I have carefully read the whole of Chapter 67 of the Laws of 1915 as well as the sections of the earlier statutes on the subject of such publications, and I am unable to discover anything which would require such a publication of the certificate of incorporation of a commercial bank organized under the last statute. I believe that your view is a correct one, -- that this last statute is entirely new, separate and complete and does not carry into it, by reference of any possible construction, the requirements of earlier laws as to the organization of banking corporations. The general corporation act, which was Chapter 79 of the Laws of 1905, did not authorize the creation of banks thereunder, such corporations being expressly excepted by Section 5 of the act which is now Section 889 of the codification. It is true that Section 131 of the original act, now Section 1014, declared that the provisions of the act should be applicable to corporations created under the act in relation to banks and banking of 1884 and under the other as to savings banks and trust associations of 1887, and this would make it necessary for corporations thereafter created under those acts, to publish certificates of incorporation as required by Section 1018; but Chapter 67 of the Laws of 1915 fully and entirely supersedes these earlier acts as to the formation of banks and trust companies.

I have consulted with the Deputy State Bank Examiner and found that his view of the act is the same as ours, but he has had no occasion to pass on the question which would be one for the State Corporation Commission. I then went to the office of the Corporation Commission and learned that no ruling had been made by that body on the subject, although one or more banks organized under the new act have actually made the publication.

I am unable to see how the requirement as to publication can be held applicable to the banks organized under the last act.