

## Opinion No. 17-1988

May 7, 1917

**BY:** GEORGE C. TAYLOR, Assistant Attorney General

**TO:** Mr. George H. Van Stone, State Bank Examiner, Santa Fe, New Mexico.

"Business of Banking" Defined.

### OPINION

I have your letter of April 30, 1917, in which you ask for a legal definition of the words "the business of banking" in Section 2, Chapter 67, Laws of 1915, and further asking whether a declaration to any of their customers by any person, firm or corporation engaged in a mercantile business of their willingness to receive money on deposit, subject to call or check, brings such person, firm or corporation under the second clause of Section 3, Chapter 67, Laws of 1915.

In reply, you are advised that the second clause of Section 3, Chapter 67, contains the answer to your first question, i. e., "Such individuals, firms or corporations as shall advertise and hold themselves out to the public as receiving money on deposit, whether on certificate or subject to check, shall be considered as doing a banking business, within the meaning of this act." This clause, in my opinion, excludes the accepted common law definitions of "the business of banking," and such definitions are therefore excluded from this opinion. What would constitute "advertising and holding out" is largely a question of fact, dependent upon the varying circumstances of different cases, so that it is difficult to formulate a rule of universal application.

The practice on the part of mercantile concerns of accepting money subject to call or check simply for the accommodation of a limited number of customers is hardly within the purview of Chapter 67. But, in my opinion, the declaration of such concern of their willingness to receive money on deposit subject to call or check from any of their customers would constitute the advertising and holding out contemplated by the second clause of Section 3, Chapter 67, Laws of 1915.

I would suggest that where you receive information that a mercantile concern is receiving such deposits on a considerable scale, you make an investigation, and, if the facts brought out by the investigation indicate that such a concern is unlawfully engaged in the banking business, the matter should be laid before the proper District Attorney for his official action.

For your further information, I would suggest that you read opinion of the Attorney General, No. 1692, page 261 of the 1915-16 Report.