

Opinion No. 17-2071

December 22, 1917

BY: C. A. HATCH, Assistant Attorney General

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

Law Reducing Number of Bank Directors Applies to Banks Chartered Before Passage of Act.

OPINION

We have your favor of the 17th inst., wherein you ask whether the law passed by the last Legislature reducing the number of directors of a bank to not more than 7, is applicable to banks chartered prior to the enactment of this law.

In answering your question, it becomes necessary to see what right, if any, a bank has, to any certain number of directors. The law prior to the passage of the 1917 Act, gave banks the right to have not less than three nor more than 9 directors. This law constitutes the contract in this particular, existing between the State and a bank organized under its provisions.

It is a fundamental rule of law that the charter or contract between a corporation and the State is not subject to be impaired or abrogated by any subsequent legislation. It is equally fundamental that the Legislature has the power to make any reasonable regulations, so long as such regulations do not constitute an abridgment of the rights derived by the corporation under its contract, or, constitute an addition or burden to its liabilities.

In my opinion, the only right derived by a bank, by virtue of its contract with the State, regarding the directors, is the right to be governed by a Board of Directors. This view is borne out by the discretion given as to the number. It is apparent that no fixed or certain number was contemplated; just as long as a bank was permitted to be managed by a board of directors, whose number came within the prescribed limits, the contract was complied with. Hence, I take it, the main and only really material part of this contract was the right given the bank to be managed by a board of directors. That the number was a mere incident to this specific grant of power, or, contractual obligation. Therefore, I am of the opinion that, so long as a bank is given the right to be managed by a board of directors, and, the identity of the board is preserved laws increasing or decreasing the number of individual directors, amount to and are but mere regulations. Such laws do not impair, abrogate or destroy any vested right of the bank, derived by its contract with the State. If this is true, there is no reason why the Laws of 1917, in regard to the number of directors, should not apply to banks chartered prior to its enactment.

I can readily see the embarrassment that might be caused a bank, as mentioned in your favor, but, this can be no excuse for holding the law inapplicable.

It is, therefore, my opinion, that the Law of 1917, does apply to banks chartered prior to its enactment, as regards the number of directors.