

Opinion No. 20-2457

January 7, 1920

BY: N. D. MEYER, Assistant Attorney General

TO: Mr. James B. Read, State Bank Examiner, Santa Fe, New Mexico.

Savings Banks Cannot Engage in General Banking Business Unless Charter Is Amended.

OPINION

Your letter of December 26th, addressed to the Attorney General, was referred to me for attention yesterday afternoon.

You state in substance that the Las Vegas Savings Bank was organized under Article II of Chapter XI of the Codification of 1915 as a savings bank, and further ask if said savings bank can engage in a general banking business under their charter.

It is my opinion that the Las Vegas Savings Bank cannot, without amending their charter, engage in what you term "general banking business."

Under Chapter 11 of the Code, the banking business was divided into banks of discount; and deposit; savings banks; trust companies; and mercantile companies, and I presume that the term "general banking business" applies to those banks which were designated as "banks of discount and deposit."

However, the banking law was revised in whole in 1915 by the passage of Chapter 67, by which act banks were divided into the following classes:

- (a) Commercial Banks;
- (b) Savings Banks;
- (c) Trust Companies.

Under the new law savings banks organized under Chapter 11 of the Code went into class "b" banks specified in Chapter 67, and operate under the rights given to savings banks under said chapter.

Section 3 of Chapter 67 provides as follows:

"Corporations may be formed under the laws of this state to conduct, as provided in this act, and not otherwise, any one or all of the businesses mentioned in divisions a, b and c of Section 2 of this act."

Under this provision it would follow that the Las Vegas bank is at the present time organized and doing business only in subdivision b, which is savings banks. If a bank were to be incorporated today it could secure a charter authorizing it to engage in all three divisions; therefore, it would seem but logical that a bank organized to do business in any one of said subdivisions could amend its charter so as to authorize it to engage in any one of the other two subdivisions, or both.

Section 5 of Chapter 120, 1919 Laws, provides that in the event of an amendment of the certificate of incorporation of any bank full compliance shall be had with the general incorporation act governing amendments and certificates setting forth such amendment shall be executed in duplicate and filed in the offices of the State Corporation Commission and the State Bank Examiner, together with a statement similar to that required by section 13 of Chapter 67 of the Session Laws of 1915, which was amended by section 2 of Chapter 56 of the Session Laws of 1917. It requires that a statement shall be executed on behalf of the corporation and sworn to by its president and the cashier or secretary certifying the full amount of the entire capital stock of said corporation in cash; the names and residence of the officers, directors and stockholders of said corporation, the amount of stock owned by each, and the fact that such corporation is fully prepared to transact the business for which it was organized. After the foregoing requirements have been compiled with, section 6 of Chapter 120 of the Session Laws of 1919 provides that if the State Bank Examiner is satisfied that such amendment has been legally made and that it in no wise impairs the financial standing of said bank, he shall so report to the State Corporation Commission, which shall issue to the said bank a certificate approving such amendment and authorizing said bank to conduct business pursuant thereto.

I am of the opinion that section 25 of Chapter 120, Laws 1919, prescribing the procedure by which a bank can open a new department applies to banks which are already authorized by charter to engage in the banking business in general, and thereafter open up a new department which they had not operated from the beginning of the business, and that in the case of the Las Vegas Savings Bank the original charter should be amended as indicated in this letter.

Trusting that the foregoing gives complete answer to your letter, I beg to remain,