

Opinion No. 21-2839

February 25, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: The Honorable The Comptroller of the Currency. Treasury Department,
Washington, D. C.

Number Stockholders Corporation Necessary to Hold Election Directors.

OPINION

{*27} In reply to your letter of the 14th instant, asking for information relative to the provisions of the incorporation laws of New Mexico governing the number of stockholders of a corporation that are necessary for a quorum for the purpose of an election of directors of the corporation, we would advise you as follows:

The subject is covered by the provisions of section 922, New Mexico Codification of 1915, which is in the following language:

"All elections for directors shall be by ballot, unless otherwise expressly provided in the charter or certificate of incorporation; the polls at every such election shall be opened between the hours of nine o'clock in the morning and five o'clock in the afternoon, and shall close before nine o'clock in the evening; the same shall remain open at least one hour, unless all of the stockholders are present in person or by proxy and have sooner voted, or unless all the stockholders waive this {*28} provision in writing; the persons receiving the greatest number of votes shall be the directors: **Provided, However,** That unless otherwise provided in the original or amended certificate of incorporation, or in the by-laws approved at a stockholders' meeting, in all corporations formed under the provisions of this article, a majority in interest of all the stockholders shall be present in person or by proxy to constitute a quorum."

The above provision applies only to corporations formed under the general incorporation act, while banks are incorporated under another act which appears as Chapter 67, Session Laws 1915. By the provisions of section 1014 of the general incorporation act, the act was specifically designated to be held applicable to corporations incorporated under the Act of April 3, 1884, the act which was superseded by Chapter 67 of the Laws of 1915, the present banking act.

In view of the foregoing, therefore, it is our opinion that in those cases where no provision is made in the banking act, that the general incorporation act would be held to apply, in such instances as would not be in conflict or inconsistent with the provisions of the bank act.

There being no provision in the bank act relative to the number of stockholders necessary to constitute a quorum at the meeting of the stockholders for the election of directors, it is our opinion that the provisions of the general incorporation act above quoted would apply.