

Opinion No. [30-02]

June 18, 1930

TO: Office of the Attorney General of New Mexico

BANKS -- State banks may not purchase stock of other corporations as an investment.

OPINION

State Bank Examiner:

Reference is made to our conversation of a few days ago and your rectn letter in which you submitted this question:

"In the absence of express statutory authority, is a state bank privileged to invest its funds in shares of capital stock of other corporations for investment purposes?"

We find this specific question discussed in general in 7 C. J. 590 as follows:

"As a general rule banks are denied the power to purchase, acquire, or deal in the stock of other corporations except where such stock is acquired for a past debt or where the power is given by special enactment."

In 3 R. C. L. 433, under the title, "Subscriptions to and Purchase of Stock of Other Corporations" we find this:

"It is well recognized that corporations chartered to do a general banking business have no implied powers to subscribe to the stock of general business corporations . . . nor have they any implied power for the purpose of speculation to purchase or invest their funds in stock of other corporations"

One case cited in support of the text above quoted is Franklin Bank vs. Commercial Bank, 36 Ohio State, 350; 38 Am. Rep. 594. This is an Ohio case and in the State of Ohio the banking act expressly prohibits the dealing in shares of stock in other corporations by a bank. However, the court held that outside of the statutory prohibition such dealing would be ultra vires and against public policy. Judge Boynton in rendering the opinion said in part,

"There would seem to be little doubt either upon principle or authority and independently of express statutory prohibition of the same that one corporation cannot become the owner of any portion of the capital stock of another corporation unless authority to become such is clearly conferred by statute."

In support of this he cites cases from Connecticut, Maine, and Georgia and proceeds,

"Were this not so one corporation by buying up the majority of the shares of the stock of another could take the entire management of its business however foreign such business might be to that which the corporation so purchasing said shares was created to carry on. A banking corporation could become the operator of a railroad or carry on the business manufacturing and any other corporation could engage in banking by obtaining the control of the bank stock."

Elsewhere in this opinion the court said:

"The powers of a corporation recognized under a legislative enactment are such only as the statute confers and the enumeration of them implies the exclusion of all others."

Other cases might be cited and number of other cases will be found referred to in the decisions above named. However, these quotations will serve to show the attitude of courts in general which you will observe is that unless the power is expressly granted by the act under which the bank incorporates it is held to be excluded and a corporation organized to carry on a general banking business only will not be permitted to acquire or deal in the shares of stock of another corporation organized for purposes entirely foreign to banking.

As to national banks, and I refer to them merely as an illustration of the holding of the courts, it has been held almost uniformly that although the national banking act itself does not prohibit the purchase and ownership of stock in other corporations a national bank has no power to purchase or deal in the stock of other corporations except as incidental to its power to lend money on personal security.

"That it is unlawful for a national bank to deal in stocks will not be disputed. This, while not prohibited by the national banking laws in express terms, nevertheless the prohibition is implied from a failure to grant the power."

California National Bank vs. Kennedy, 167, U.S., 362.

The statutes of New Mexico do not specifically prohibit the dealing in and ownership of stock in other corporations by commercial banks neither does the statute specifically authorize such dealing and if we follow the line of argument in the cases to which reference is hereinbefore made it will lead us to the conclusion that what is not specifically granted or necessarily implied as an incident to the exercise of the powers granted is excluded. Of course, we may not be able to predict with certainty just what attitude our own Supreme Court would take in this matter but we deem it the part of wisdom to assume that this court would be largely guided by the decisions of other courts in interpreting our statute as applicable to the question.