

Opinion No. [30-03]

January 6, 1930

TO: Office of the Attorney General of New Mexico

BANKS -- Certain companies held to be in banking business.

OPINION

Your letter of the 2nd instant is before me in which you request an opinion as to whether the New Mexico Loan & Mortgage Company of Albuquerque and the National Savings & Loan Association of America of Salt Lake City are companies engaged in the business of a bank of deposit and accepting the payments provided by the contracts mentioned in your letter in violation of the provisions of the New Mexico Banking Code.

In reference to the first question we find that section 2 of chapter 67 of the Laws of 1915 reads as follows:

"The word 'Bank' as used in this act includes every person, firm, company, co-partnership or corporation, except National Banks, engaged in the business of banking in the State of New Mexico. Banks are divided into the following classes:

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

Section 1 of chapter 149, Laws of 1923, designates for what purposes banks may be incorporated and sections 4, 5 and 6 of chapter 67 of the Laws of 1915 classify these banks that may be so incorporated, but that does not define banking so we will have to look to the common law for the meaning of the words "business of banking" as used in section 2 above quoted.

In Anderson's Law Dictionary, page 105 we find the term banking defined as follows:

"Banking in its largest sense, includes the business of receiving deposits, loaning money, dealing in coin, bills of exchange and issuing paper money."

Then on the same page we find several definitions of a savings bank.

1st.

"A bank of deposit for the accumulation of small savings belonging to the industries and thrifty."

2nd.

"A bank for the receipt of small sums deposited by the poorer class of persons for the accumulation at interest."

3rd.

"An institution formed for the purpose of receiving deposits of money for the benefit of the depositors, investing the same, accumulating the profit or interest thereof, paying such profit or interest to the depositors, or retaining the same for the greater security, and, further, of retaining the deposit itself."

Webster's New International Dictionary, page 179, defines banking in these words:

"The business of banking originally was that of taking money on deposit subject to check or draft, loaning money, as by discounting notes and bills, issuing drafts and any other associated form of general dealing in money or credit. One or more of these operations if carried on with the public in general may be construed as banking."

It seems very clear that in both cases mentioned in your letter the agreements which are used by both of these parties show that they are engaged in the business of banking under the above definitions.

As to your second question, section 7 of chapter 67 of the Laws of 1915, provides that anything required of an incorporated bank is also required of an individual or co-partnership engaged in the banking business. Of course, there are a number of requirements provided throughout the banking act, for instance, those found in section 8 of chapter 67, Laws of 1915, as amended by section 1 of chapter 131 of the Laws of 1929.

It would therefore appear clear that if these parties mentioned in your letter are engaged in the banking business, which we believe they are as indicated above, they are violating the banking laws if they have not complied with the terms thereof.

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