

Opinion No. 32-447

April 22, 1932

BY: E. K. Neumann, Attorney General

TO: Mr. J. A. McNabb, First Asst. State Comptroller, Santa Fe, New Mexico.

{*158} This concerns the letter of Jesse T. Smith, County Clerk, Hidalgo County, with reference to the fees for recording real estate mortgage deeds.

In my opinion, Sec. 18-106, 1929 Code, is still in effect and the proper fee is \$ 1.50. I am unable to find any statute in conflict with this section or which repeals it.

By: Quincy D. Adams,

Asst. Attorney General

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BY: E. K. Neumann, Attorney General

TO: Reconstruction Finance Corporation, 1825 H Street, Northwest, Washington, D. C.

{*157} This office has been requested for an opinion as to whether or not Building & Loan Associations in this State have power, under the statutes of New Mexico, to borrow money and pledge their assets as security for the money so borrowed.

{*158} It is to be noted that until the passage of Chapter 147 of the Laws of 1931, the following, Sec. 18-113, 1929 New Mexico Code, was in effect, to-wit:

"Any such association may allow reasonable compensation to its auditing committees for their services as such, and may for the legitimate purposes of such association, on a vote of a majority of all its directors, borrow money in anticipation of payment of dues."

This section was repealed by Sec. 15 of said Chapter 147 of the Laws of 1931, so that, at this time, Building & Loan Associations have no express power, given by statute, to borrow money or pledge their assets as security therefor. Neither is there a statutory denial or limitation upon such rights.

It is our further opinion, however, that, in absence of express power by statute where there is no express prohibition or limitation thereon, unless prohibited or limited by their articles of association, rules or by-laws, Building & Loan Associations have the implied power to borrow money when it is reasonably necessary in order to carry out the

purposes of their organization, and with this power they may pledge their assets to secure the repayment of such sums borrowed. This power may be limited or entirely prohibited by articles of association, rules or by-laws in the case of each particular association attempting to borrow, and the provisions of such articles, rules or by-laws would, of course, control in each individual case, both as to the power to borrow and to pledge assets for the repayment of sum borrowed.

This seems to be clearly the rule in the United States, by a majority of opinion, and so stated to be the rule by all authorities. While we have no decision in this State, it is our opinion that such rule would pertain. Our reasons for such assumption are strengthened by the following part of Sub-Section 7 of Section 1, Chapter 147, Laws of 1931:

". . . and shall possess all other powers incident to, or necessary for, the purpose of properly carrying on its business. . . ."