

## Opinion No. 32-439

April 15, 1932

**BY:** E. K. Neumann, Attorney General

**TO:** Honorable John Bingham, State Bank Examiner, Santa Fe, New Mexico.

{\*154} You request a construction of Sec. {\*155} 13-138 of the 1929 New Mexico Code, with reference to its effect upon transactions between state banks and the Reconstruction Finance Corporation, wherein the former, in procuring money from the latter are required to deposit collateral to secure the rediscounts. To your query you have attached a letter from Mr. E. W. Kayser, Manager, Reconstruction Finance Corporation, El Paso, Texas, a letter from his attorneys, Messrs. Turney, Burges, Culwell and Pollard, a letter from G. C. Holmberg, Assistant to the Director of the Reconstruction Finance Corporation and R. F. C. Forms L-22-23-24-25-26-3-4-9.

Sec. 13-138, 1929 Code, is as follows:

"No bank shall borrow money, and the rediscounting of paper shall not be considered as borrowing money, in excess of the amount of its capital stock and surplus, nor without the authority of the board of directors, entered of record in the minutes of the board. If any bank shall hypothecate or pledge any of its securities or other assets as collateral for money borrowed, and said bank shall be taken possession of by the state bank examiner at any time before such pledge or hypothecation shall be foreclosed, a grace of thirty days after the date when the state bank examiner so takes possession shall be allowed in which such bank or the state bank examiner shall be permitted to redeem such securities or other assets by the payment of the amount due under the terms of the existing contract."

Apparently, money to be obtained by the state banks is obtained by forwarding certain of its paper for rediscounting with the Reconstruction Finance Corporation, which will be endorsed by the applicant bank and the liability of the applicant upon such paper rediscounted is additionally secured by collateral in such amounts as may be determined by the Corporation. It is to be noted that, in the form mentioned, the whole matter, while called a rediscount transaction in its entirety, is denominated in various places "Application for Loan by Rediscount," "Loan by way of Rediscount," and "Loan." Also we find "hereby applies XXX for a loan in the sum of," "such loan is to be additionally secured" and many like terms.

The specific question is whether such transaction constitutes a borrowing of money by the state bank, which, under the status referred to, would be limited in an amount not exceeding the amount of the bank's capital stock and surplus, or whether same is a rediscounting of paper and not to be considered as the borrowing of money by a state bank.

We will, of course, assume that in either event the proposed transaction has the approval of the board of directors or other officers so as to constitute a valid transaction within the limits prescribed by law.

Undoubtedly state banks in New Mexico are given the power to borrow money within the provision of Sec. 13-138, and of course such banks have the statutory and inherent right to rediscount their paper.

Magee in *Banks and Banking*, 3rd Ed. at Page 426, defines a rediscount, as follows:

"A rediscount is the selling of a note which has been duly executed to the bank, calling for a certain sum of money, payable at a future date, which note is by the bank endorsed either with or without recourse by another bank or person.

A rediscount by a bank of its bills, receivable, if it endorses same by a general endorsement, only becomes contingently liable for the payment, and it is not borrowing money by the bank; but has more of the characteristics of a sale."

In the present case, the transactions proposed hardly fall, in my opinion, within the above definition as a rediscount transaction. There is a strict liability upon the part of the bank to pay the sum procured, not only by delivery of the paper rediscounted and promise to pay same as it becomes due, but also by delivery of other collateral to secure that amount procured by way of rediscount. It certainly does not have any of the elements common to a sale, being rather in the nature of a borrowing with a pledge securing the moneys borrowed. The relation of debtor and creditor is immediately created, which would not be the case {*\*156*} in a straight rediscounting transaction.

Our conclusion, therefore, is that the transaction proposed under the plan of the Reconstruction Finance Corporation must be treated by you as a transaction constituting the borrowing of money by a state bank, and therefore, the aggregate so procured must be added to the other borrowings by the bank to determine if the total thereof exceeds the amount of the bank's capital and surplus, the limits set by the statutes of this state.

Under such a holding, we are of the further opinion that a state bank has the power to rediscount its paper and pledge other and additional collateral to secure such rediscounts, under the Reconstruction Finance Corporation plan, not as a rediscount transaction, but as a borrowing of money, which loan to such bank is secured by a pledge of bills receivable. In other words, the matter of a rediscounting would never arise -- the whole transaction being treated as a transaction of borrowing, as allowed by statute.