

Opinion No. 33-602

May 23, 1933

BY: E. K. NEUMANN, Attorney General

TO: Hon. R. W. Heflin, State Banking Department, Santa Fe, New Mexico.

{*52} This is in reply to your letter of May 22, 1933. As you say in your letter, New Mexico does not have an Industrial Bank Law. Any company organized for the purpose of doing a banking business would, therefore, have to comply with our law with reference to the organization of banks, including that provision which requires a minimum paid-up capital of \$ 25,000.00 and surplus of twenty per cent of the paid-up capital.

It is stated in 7 C.J. 475 that "the receiving of money of others for deposits is a distinctive feature of the business of banking." A company which receives deposits and carries checking accounts would, therefore, in my opinion, be engaged in the banking business.

As to the sale of pre-organization shares previous to incorporation, I see no reason why such shares should not be sold providing our laws are complied with. It may be that in some cases such shares would be considered as 'speculative securities,' within the meaning of our Blue Sky Laws.

By: QUINCY D. ADAMS,

Asst. Attorney General