

**Opinion No. 39-3361**

December 22, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. Woodlan P. Saunders, State Bank Examiner, Santa Fe, New Mexico.

{\*126} In your letter of December 19th you ask whether or not a commercial bank with a capital of less than \$ 100,000.00 would be qualified to act as executor or administrator by special appointment under the provisions of Section 1, Chapter 30, Session Laws of 1921.

Section 2222 of the New Mexico Statutes, Annotated, Codification of 1915, as amended by Chapter 30 of the Session Laws of 1921, as amended by Chapter 47 of the Session Laws of 1929, reads as follows:

"National Banks, organized under the National Bank Act and resident within this State, State Banks and Trust Companies organized under the laws of this State, and persons capable of making a will, may be appointed executors or administrators. In case of the appointment of a corporate executor or administrator, as above provided, the oath required by law shall be made by the president, vice-president or cashier of said corporate executor or administrator for and on behalf of said corporation; provided that National banks which have qualified under the provisions of the National Bank law to act as executors or administrators shall be exempt from giving bond under the laws of the State of New {\*127} Mexico for the faithful performance of their duties as such executors and administrators."

Section 2, Chapter 67, Laws of 1915 defines banks 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
- c. Trust Companies."

I am of the opinion that under Section 1, Chapter 47 of the Session Laws of 1929, a commercial bank, which is defined in Section 4, Chapter 67 of the Session Laws of 1915, as a bank authorized by law to receive deposits of money, deal in commercial paper, or to make loans thereon, and to lend money on real estate or personal property, and to discount bills, notes, and other commercial paper, and to buy and sell securities,

gold or silver bullion, or foreign coins or bills of exchange, is qualified to act as executor or administrator.