

Opinion No. 41-3901

September 16, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Don R. Casados Chairman, State Corporation Commission Santa Fe, New Mexico

{*98} Your letter dated September 11, 1941, requests an opinion of this office as to whether or not a Building and Loan Corporation is required by law to pay, in addition to the \$ 100.00 fee paid the State Bank Examiner, those fees regularly required of corporations filing papers with the Corporation Commission.

Subsection 7 of Section 1, Chapter 147, Laws of 1931, provides that the certificate of incorporation of a Building and Loan Association must be executed in duplicate, that one copy thereof be filed with the Bank Examiner at a cost of \$ 100.00. This subsection specifies that the other copy shall be filed with the State Corporation Commission but no provision is made in this Act or subsequent amendatory acts {*99} (Chapter 78, Laws of 1933 and Chapter 143, Laws of 1937) as to the fee to be charged for the filing with the Corporation Commission.

However, Section 32-223, 1929 Compilation, provides in part as follows:

"Fees. On filing any certificate or other paper relative to corporations, domestic or foreign (including domestic insurance companies, but not including foreign insurance companies) in the office of the state corporation commission, the following fees and taxes shall be paid:

(1) For certificates of incorporation of domestic corporations, ten cents for each thousand dollars of the total amount of capital stock authorized, but in no case less than twenty-five dollars."

In view of the foregoing, it is my opinion that Building and Loan Corporations must pay the fees prescribed by Section 32-223, New Mexico Statutes, Annotated, 1929 Compilation, to the State Corporation Commission in addition to that \$ 100.00 fee which must be paid the State Bank Examiner pursuant to the provisions of Chapter 147, Laws of 1941. From the two laws outlined above, it appears that the fee paid the State Bank Examiner is a regulatory tax or fee paid for supervision and that the fees paid the State Corporation Commission are in the nature of a franchise tax for the privilege of operating as a corporation in the State of New Mexico.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By GEO. H. HUNKER, Jr.

Asst. Atty. General