

Opinion No. 46-4894

April 29, 1946

BY: C. C. McCULLOH, Attorney General

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

{*222} Replying to your letter of April 25, 1946, wherein you request an opinion on the following question:

Will a state bank, capital stock of \$ 100,000.00, doing business as a Commercial and Savings Bank, be required to increase its capital in the additional sum of \$ 100,000.00 to be authorized to conduct a trust business?

Our statutes, under "Banks and Other Financial Institutions," which includes "Trust Companies", are so interrelated that it is necessary to analyze all of the following sections, or portions thereof, to attempt to find the intent of the Legislature.

Section 50-106 of the N.M. 1941 Compilation is as follows:

"'Trust Company' defined. -- The term 'trust company,' when used in this act, means any company which is incorporated for the purpose of conducting the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository, trustee and such other purposes as hereinafter specifically set forth in section 60 (Sec. 50-503) of this act."

Section 50-201 of the N.M. 1941 Compilation is as follows:

"Incorporation -- Certificate -- Contents. -- Any number of persons, not less than five, may organize a corporation to engage in the business of banking. * * * The provisions of this section shall not be construed to apply to 'trust companies.'"

Section 50-501 of the N.M. 1941 Compilation is as follows: (Concerning Trust Companies.)

"Incorporation -- Articles of agreement -- Contents. * * * Third, the amount of the capital stock of the corporation and the number of shares into which it is divided; which amount of capital stock shall not be less than one hundred thousand dollars (\$ 100,000); * * *"

Section 50-214 of the N.M. 1941 Compilation is as follows:

"Minimum capital. -- No bank hereafter organized shall do business unless it shall have a bona fide minimum paid-up capital stock of at least twenty-five thousand dollars (\$ 25,000), * * *. This section shall not be construed to apply to 'trust companies.'"

Section 50-218 of the N.M. 1941 Compilation is as follows:

"Separate accounts of different departments -- Place of business. -- Every bank having different departments shall keep separate accounts for each department of its business, and shall conduct the business of all its departments in one building, or in adjoining buildings."

Section 50-507 of the N.M. 1941 Compilation is as follows:

"Certificate of payment of capital stock -- Authority to do business. -- As soon as the amount of capital stock required to be paid in has been actually paid in lawful money of the United States, a certificate setting forth such fact shall be executed in duplicate by the president, and cashier or secretary of said corporation, and filed in the offices of the state corporation commission and the state bank examiner. Thereupon the same procedure shall be followed as is described in section 3 (Sec. 50-205). No such corporation shall advertise or hold itself out as an authorized trust company, nor shall { *223 } it transact any business until it shall receive the certificate herein provided."

Section 50-522, 50-223 and 50-224, "Federal Reserve Act" not included in this opinion.

The following quotation from C.J.S., Volume 9, Section 1045, appears pertinent:

"* * * Because of the distinction between the two types of institutions stated in the preceding section, statutes regulating the business of banks are usually considered not applicable to trust companies, and, although the section of a regulatory act devoted to definitions provides that the word 'bank' shall include trust companies, if the act is subsequently separated into articles, one dealing with banks and one with trust companies, a specific provision concerning banks in the article on banks cannot be extended to trust companies where the article on trust companies contains another and inconsistent provision on the same matter. * * *"

By reason of the foregoing, it is my opinion that a bank, as outlined in your question, to qualify as a "Trust Company" must have \$ 100,000.00 additional capital for that department.

By THOS. C. McCARTY,

Asst. Atty. General