

Opinion No. 53-5838

November 4, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Alfred W. Kaune State Bank Examiner Santa Fe, New Mexico

{*255} This is in reply to your request for an opinion upon the question of whether a State bank, with a paid-in capital of \$ 200,000, is eligible to amend its charter to include a trust department without increasing the existing capital structure of the bank.

This office in Opinion No. 8494, dated April 29, 1946, stated that a State bank in existence, desiring to add a trust department, would have to have \$ 100,000 paid-in capital designated and set aside specifically for the trust operation. It is felt that possibly this opinion may have been misconstrued to requiring every existing State bank to increase its paid-in capital stock by \$ 100,000 in order to meet the requirement of \$ 100,000 paid-in capital stock to do business as a trust company. The opinion should not be so construed to require in every case an additional \$ 100,000 in paid-in capital stock.

Under Ch. 50, N.M.S.A., 1941 Comp., as amended, the compiler has assembled under the title "Banks and other Financial Institutions" the various enactments dealing with banks, enacted prior and subsequent to the 1915 Bank Act. The Bank Act, as it is known, L. 1915, Ch. 67, § 1, et seq., contains the definition of the three types of banks, i.e. commercial, savings, and trust, and the manner in which a bank shall be incorporated. It is to be noted that L. 1903, Ch. 109, § 1, which appears as § 50-1301, et seq., provided for the incorporation of mercantile companies also engaged in banking, and required a paid-in capital {*256} stock of not less than \$ 20,000 and a separation of the banking business from its regular mercantile business. This office, in an unnumbered Opinion dated March 1, 1929 at page 14, arrived at the conclusion that this law did not require an additional paid-in capital of \$ 20,000 over and above the paid-in capital of the company in its general operations.

It is to be noted that the Bank Act, under § 50-201 et seq., sets up the general requirements for a company which desires to go into the banking business. Section 50-214 requires a minimum paid-up capital of \$ 25,000. It is to be noted in this respect that § 50-218 requires such banking business to keep separate accounts for different departments which would infer that a State bank, with a savings department, a commercial department, and a trust department, would segregate and keep separate these activities. The section on savings banks, which appears as § 50-401 et seq., does not require any capital or corporate structure in variance to the general requirements stated above, whereas the section on trust companies, appearing as § 50-501 et seq., sets up a different requirement on the incorporation of trust companies, specifically requiring \$ 100,000 paid-up capital stock and other specific requirements as to directors and purposes of the corporation. It is to be noted that the above cited sections were all passed simultaneously by the 1915 Legislature.

The 1931 Legislature in L. 1931, Ch. 148, § 1, which appears as § 50-808 of the 1941 Comp., defines the term "bank" to include commercial banks, savings banks, trust companies and unincorporated banks. In this respect § 50-507, which was originally part of the Laws of 1915, sets up the procedure for the certification of a bank to conduct specified trust business upon the satisfaction of the requirements for paid-in capital stock and the last sentence provides as follows:

"No such corporation shall advertise or hold itself out as an authorized trust company, nor shall it transact any business until it shall receive the certificate herein provided."

Under general laws applicable to amendments of Articles of Incorporation or charters and specific requirements set out under this section, § 50-206-7, N.M.S.A., 1941 Comp., as amended, a State bank desiring to organize a trust department may make such amendments within the requirements of § 50-501 et seq., N.M.S.A., 1941 Comp., by setting aside separate and apart from other department or departments at least \$ 100,000 of its paid-in capital for the specific purpose of conducting a trust department.

It is, therefore, the opinion of this office that a State bank, meeting the general requirements of the banking laws as to paid-in capital and proper segregation of accounts, may, by meeting the additional requirements set out in § 50-501 et seq., and upon receiving a certificate as to the fact that it has an actual paid-in capital stock of \$ 100,000 for its trust department, then hold itself out and perform the business of a trust company.

By: William J. Torrington

Assist. Attorney General