

Opinion No. 54-5960

May 28, 1954

BY: RICHARD H. ROBINSON, Attorney General

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

{*418} In your letter dated May 26, 1954, you inquire as to the procedure to be followed by you in connection with § 50-215 of the 1941 Compilation, pertaining to persons, copartnerships and corporations engaged in the banking business and some other business also.

Your first question is: "Should I prepare a formal certificate of authority authorizing the applicant to conduct a banking business and in what form?"

The authority to conduct a banking business under this section is governed by the statutory procedure for organizing a banking business generally and the manner of approval et cetera appears in § 50-205. Under this section, if the bank has been legally organized and ten per cent of the capital stock has been paid in cash, there are certain requirements to be approved by the Bank Examiner and, if he is satisfied concerning these requirements, he shall in writing, in duplicate, approve the application for the authority to organize such bank, deliver one copy to the organizers and the other copy to the State Corporation Commission. Thereafter the Corporation Commission gives notice to the subscribers that if within thirty days the full amount of the capital stock shall have been paid in cash, a charter will issue. After the capital stock is fully paid in, the State Corporation Commission thereupon issues a charter creating such banking corporation.

It is therefore apparent that you do not prepare a formal certificate of authority but the charter is issued by the Corporation Commission.

Your second question is: "Do I have the same supervisory powers over concerns of this character as I presently exercise over New Mexico State banks under the provisions of the New Mexico banking laws?"

The answer to this question apparently appears in the last sentence of § 50-215, as follows:

"Every person, copartnership and corporation so carrying on a banking business in connection with any other business shall keep separate books of account for each banking business, and shall be governed as to all deposits, reserves, investments and transactions relating to such banking business, by the provisions of this act provided for the control of such banking business, and with respect to said banking business or banking department shall be subject to all of the provisions of this act."

This language seems too clear to require any further comment and makes such banking organizations subject to your supervisory powers the same as other New Mexico state banks.

By: C. C. McCulloh