

**Opinion No. 55-6094**

February 4, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. John Y. Helm, State Bank Examiner, Santa Fe, New Mexico

You have requested the opinion of this office as to whether or not each director of a bank must have at least ten shares of \$ 100.00 par value stock in said bank in order to qualify as such director.

Section 48-2-1, N.M.S.A., 1953 Compilation, contains a requirement that in organizing a corporation to engage in the business of banking in the State of New Mexico, the amount of the capital stock of such corporation, the amount of the surplus fund, and the number of shares of par value of \$ 100.00 each into which same be divided are required to be listed.

It is to be noted that the requirement relative to the \$ 100.00 par value of each share of stock only appears in the section of the Bank Act which deals with requirements for original incorporation. While it is true that § 5 of the general incorporation statutes (51-2-6, N.M.S.A., 1953 Compilation) specifically excluded banks and thereby clearly placed all authority concerning banks in the Bank Act, nevertheless by § 51-2-21, N.M.S.A., 1953 Compilation, the Legislature provided that the directors of a bank might increase or decrease the par value of the shares of a bank's capital stock.

Therefore, since a bank, or its board of directors, can validly decrease the par value of its shares of stock, it follows that the requirements of § 48-2-8, N.M.S.A., 1953 Compilation, are satisfied if every director of the bank owns not less than ten shares of stock in the bank of which he is director and said shares are not pledged or encumbered regardless of the par value of the stock, except of course during the original incorporation period and until the par value of the stock is changed.

Hoping this opinion is of service to you, we remain

By Jack A. Smith

Assistant Attorney General