

Opinion No. 56-6526

October 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. F. F. Weddington, State Bank Examiner, Post Office Box 416, Santa Fe, New Mexico

Reference is here had to Attorney General's Opinion No. 6482, in which this office rendered an opinion anent the privilege of building and loan associations chartered by the State wishing to voluntarily liquidate under our statutes.

From a letter dated September 27, 1956, by Mr. Gordon Shermack, and the enclosures annexed thereto, it would appear that a further opinion from this office is desirable.

The matter now before us would appear to be this:

"Can a State chartered association legally convert to a Federal chartered association under the laws of the State of New Mexico?"

We find the statutes of the State of New Mexico silent on the subject of the aforementioned privilege of conversion. Without further investigation, it would be our opinion that a corporation created by and under the statutes of the State of New Mexico is privileged to do only such things as are specifically authorized or necessarily implicated. We are of the opinion that such enabling statutes are to be strictly construed.

In addition to the above, our opinion is bolstered by the decision in Hopkins Federal Savings and Loan Association vs. Cleary et al., 80 L. Ed. 251, 100 A.L.R. 1403. This case, affirmed by the Supreme Court of the United States, specifically holds that where a State statute is silent upon the privilege of conversion, as is here in question, that the Home Owners Loan Act is an unconstitutional encroachment upon the powers reserved to the states by the Tenth Amendment to the Federal Constitution, insofar as it authorizes such a conversion without consent of the State.

Hence we know of nothing that would be calculated to change our opinion that, at this time, a building and loan association chartered by the State of New Mexico may not convert into a federally chartered association.

By Howard M. Rosenthal

Assistant Attorney General