

Opinion No. 57-22

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BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
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TO: Mr. F. F. Weddington, State Bank Examiner, Santa Fe, New Mexico

QUESTIONS

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1. May a savings bank, as defined in § 48-1-5, organized under the laws of New Mexico, eliminate from its charter authority to accept checking accounts?
2. May a savings bank, as defined in § 48-1-5, organized under the laws of New Mexico, assume authority to issue investment certificates and invest their resulting funds according to §§ 48-16-1 et seq.?

CONCLUSIONS

1. Yes.
2. No.

OPINION

ANALYSIS

Nothing in the "Bank Act" prevents a savings bank from waiving a privilege which may be issued to it by charter, so long as the waiver does not operate to evade a responsibility demanded by the state. Hence a savings bank may waive the authority to have checking accounts.

The second question appears to be covered by our statutes. Section 48-1-3, below repeated verbatim, with underlining ours, circumscribes the limitations of the enabling provisions of the "Bank Act".

"Corporations may be formed under the laws of this state to conduct, **as provided in this act, and not otherwise**, any one or all of the businesses mentioned in divisions a, b, and c of section 2 (48-1-2) of this act and as defined in sections 4, 5 and 6 (48-1-4 to 48-1-6) of this act."

Section 48-1-5, below repeated verbatim, with underlining ours, defines savings banks.

"The term 'savings bank,' when used in this act, means a bank organized for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors and which may loan and invest the funds thereof, receive deposits of money; loan, invest and collect the same with interest; **and invest its funds in such property, securities and obligations as may be prescribed by this act.**"

Under this section, a savings bank is specifically limited in the investment of its funds "as may be prescribed by this act." Please refer to §§ 48-3-1 et seq. for such limitations as are referred to in the above section.

Sections 48-16-1 et seq., not a part of the "Bank Act", authorizes, under specific regulation, the issuance of "Installment Savings and Investment Certificates" and the limitations concerning the investment of such funds are delineated in § 48-16-4. Hence, a savings bank issuing said certificates would be required to comply with § 48-16-4, not a part of the "Bank Act", and not in accordance with the provisions therein restricting savings bank investments. It is not necessary to point out differences or parallels in the two sections restricting fund investments. It is merely necessary to state that a savings bank must comply with the provisions of its enabling act and not with the provisions of any other act.

Hence we are of the opinion that a savings bank may not participate in any business transaction unless the investment of the funds accruing therefrom are covered by the provisions of the "Bank Act".