

Opinion No. 60-53

March 23, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Joseph B. Grant State Bank Examiner Santa Fe, New Mexico

QUESTION

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May the State Banking Department, under the Building and Loan Association Laws of New Mexico, authorize the opening of branches by state chartered building and loan associations?

CONCLUSION

Yes.

OPINION

{*410} **ANALYSIS**

Building and Loan Associations are of two kinds, each authorized by statute. Section 48-15-1, N.M.S.A., 1953, et seq., as amended, deals with mutual building and loans. Section 48-15-26, et seq., refers to capital stock building and loans. The latter category of associations, by nature and by statute, requires somewhat different supervision, and has different privileges and responsibilities, but Section 48-15-37 provides:

"All capital stock building and loan associations shall be subject to the provisions of Sections 48-15-1 through 48-15-25, . . . where not inconsistent with the Capital Stock Building and Loan Association Act."

Nothing appears to specifically authorize or prohibit the establishment of branches by building and loan associations of either type. Perusal of the foregoing statutory sections relating to building and loans elicits in Section 48-15-1 (2):

"The location of the principal office . . ."

and again in Section 48-15-1 (7):

". . . in which the principal office of the corporation is to be located. . ."

and again in Section 48-15-4:

". . . wherein such association has its principal office. . ."

and again in Section 48-15-29 (B):

"The principal office or place of business of the association. . ."

The exact legal point raised by implication in the above excerpts has been exhaustively passed upon by the Supreme Judicial Court of Massachusetts (writ of certiorari being denied by the United States Supreme Court):

Springfield Institution For Savings v. Worcester Federal Savings and Loan Association, et al., 107 N.E. 2d 315.

That case stands four-square with the instant situation as it was a declaratory proceeding to determine the authority of the Home Owner Loan Corporation to lawfully authorize branches of Federal savings and loan associations. The facts were even more negative than here as Massachusetts statute specifically laid down limitations on the establishment of such branches. The case held branches authorized and said in part:

"If branches are not authorized, it would be pointless to refer to the 'home office' or 'principal office'."

Media T & T Company v. Cameron, 137 A. 129.

Also, lest it be thought that the above constitutes a single instance {**411*} of mental aberration by the United States Supreme Court,

North Arlington National Bank v. Kearney Federal Savings and Loan Association, 187 Fed. Rep. (2nd) 564,

states:

"It is argued, with plausibility, that it would be meaningless to speak of a 'home' office if that was the only kind of office the association could have."

Hence we are driven to the conclusion that the State Banking Department has lawful authority to approve branches of state chartered building and loan associations.

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