

Opinion No. 62-31

February 8, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General L. D. Harris, Assistant Attorney General

TO: Mr. John Block, Jr., Chairman, State Corporation Commission, Santa Fe, New Mexico

QUESTION

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Can a corporation licensed under the provisions of Section 48-14-1, et seq., N.M.S.A., 1953 Compilation, engaging in the general banking business as provided, continue to operate upon full compliance with the above-quoted sections of the statute even though the business is now conducted in an incorporated municipality of more than 1500 inhabitants?

CONCLUSION

No, see analysis.

OPINION

ANALYSIS

In 1956, the Supreme Court of New Mexico construed the various statutes applicable to the conduct of banking business in the case of **First Thrift and Loan Association v. State**, 62 N.M. 61, 304 P. 2d 582.

In analyzing this case, it is apparent that the corporation attempted to engage in the banking business in Albuquerque, where the population exceeded 1500 many times and that the corporation was not properly incorporated for the banking business. According to the facts which you have given us, the corporation concerned which you inquire appears to have been properly incorporated to engage in the general banking business in a community whose population is less than 1500 but due to annexation now finds itself in a municipality whose population exceeds 1500. Therefore, we have noted that this exact problem has not been before our Supreme Court.

There is considerable language in **First Thrift and Loan Association v. State**, supra, which leads us unerringly to the conclusion that the corporation involved is not properly incorporated to conduct a general banking business in a municipality of over 1500 population. We find the following language in **First Thrift and Loan Association v. State**, supra:

". . . To elucidate, if as seems the case the statute in question authorizes mercantile corporations to carry on as one phase of their business a savings bank, in towns of less than 1500 population, by the same token, **it would deny even mercantile corporations the authority to do so in towns of more than 1500 population. . . .**"
(Emphasis supplied)

It seems proper to review the purpose of certain laws applicable to the conduct of banking business and we find the Supreme Court ably reviewing the cause for legislation in **First Thrift and Loan Association v. State**, supra. The Court states:

"It requires no profound thinking to see through the reason for the enactment of a statute containing special provisions for the incorporation of banks. The business of banking is one teeming with the public interest. The welfare of the public, that is, of stockholders, depositors, borrowers, and others with whom a bank does business, confronts one at every turn.

* * *

The legislature provided the safeguards mentioned for the protection of the public in general and depositors in particular. Hence, it is not at all surprising that in order to assure this protection, it has provided no corporation should be organized, having as one of its purposes the conduct of a savings bank, except through the banking sections mentioned above; or, in the case of cities and towns of less than 1500 population, through the incorporation of a mercantile company with banking as one of its departments."

Our analysis of **First Thrift and Loan Association v. State**, supra, based on the explicit language of the Court necessitates our conclusion that in towns of more than 1500 population, a mercantile business cannot engage in a general banking business even if it had been doing so prior to annexation by a municipality.

Further supporting this approach, research has indicated that any territory annexed by a municipality is at once subject to the jurisdiction of the municipality immediately upon annexation. **Anderson v. Nick**, 84 N.E. 2d 394, 402 Ill. 508; **Garden Homes Sanitation District v. City and County of Denver**, 116 Colo. 1, 177 P. 2d 546; and **People ex rel. Simon v. Anderson**, 112 Colo. 558, 151 P. 2d 972. Therefore, upon annexation, the corporation involved would have to qualify to conduct a banking business in a municipality having a population exceeding 1500.

Our conclusion is that in municipalities with over 1500 population, there is no authority in Section 48-14-1 et seq., for a mercantile company to engage in the general banking business. If the corporation which was the basis of your inquiry desires to continue in the banking business, it must follow the procedure outlined in our statutes.