

Opinion No. 72-08

March 1, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General James B. Mulcock, Jr.,
Assistant Attorney General

TO: Mr. Roy W. Davidson, Commissioner of Banking, Department of Banking Lew
Wallace Building, Santa Fe, N.M. 87501

QUESTIONS

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May a person having a current license from the Commissioner of Banking to sell, issue or register checks or money orders issue such checks or money orders for use in bidding on leases in the simultaneous drawings held monthly by the Bureau of Land Management, U.S. Department of Interior?

CONCLUSION

Yes.

OPINION

{*10} ANALYSIS

Section 48-22-74, N.M.S.A., 1953 Comp. is the controlling New Mexico law in this regard. Because of its length it will not be reproduced in full and this opinion will digest those provisions which we find applicable to the question posed. First it will be noted that "any bank, insured building and loan associations, telegraph company, or governmental agency or instrumentality or any railway express agency engaged in interstate commerce" is specifically excluded from having to obtain from the New Mexico Banking Commissioner a license to issue money orders or certified checks. Any other person who wishes to obtain a license "to engage in the business of selling, issuing or registering checks or money orders" must obtain a license from the commissioner by making application for such license "to sell, issue or register checks or money orders in this state." The application must be made under oath and must include the {*11} "full name and address of the applicant . . . the financial statement of the applicant as of the end of the last fiscal year for which an annual statement has, in accordance with normal accounting practice, been prepared, certified by a certified public accountant or a registered public accountant . . . a letter or letters of recommendation from bank or banks with which applicant does business . . . any other pertinent data required by regulation . . . and an investigation fee of \$ 50.00."

Further, the statute requires that before a license is issued the applicant must have furnished a penal bond of \$ 10,000 plus an additional principal sum of \$ 5,000 for each location in which he is to operate so long as the bond does not exceed \$ 200,000.

Once the above steps have been completed, you, as Commissioner, have the statutory duty to investigate the "financial responsibility, financial and business experience, character and general fitness of the applicant." If this investigation satisfies you that the applicant has a minimum net worth of \$ 100,000 and satisfies you that the "applicant's business will be conducted honestly, fairly, equitably, carefully and efficiently, and in a manner commanding confidence and trust of the community," it is then your duty to issue the applicant a license to sell and issue checks and money orders.

After setting out this criteria, for determining the qualifications an applicant must meet, Section 48-22-74, **supra**, provides a system of administration and inspection to be followed by the Commissioner, but in no respect does it seek to limit or define the purposes for which a person duly licensed as hereinbefore set forth may sell, issue, or register checks or money orders. Consequently, it is our opinion that a person duly licensed may issue money orders to be used in the bidding on leases at the simultaneous drawings held monthly by the Bureau of Land Management, U.S. Department of Interior.