

## Opinion No. 82-13

August 20, 1982

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Douglas Meiklejohn, Deputy Attorney General

**TO:** Mr. Snider Campbell, Savings and Loan Supervisor, Financial Institutions Division, Lew Wallace Building, Santa Fe, New Mexico 87503

### FINANCIAL INSTITUTIONS

A New Mexico state chartered savings and loan association may purchase the assets, including two branch offices located more than 100 miles from the purchasing association's principal office and assume the liabilities of another state chartered savings and loan association. Such a purchase and assumption can be effected without a vote of the stockholders of the acquiring savings and loan association and without the approval of the New Mexico Savings and Loan Supervisor.

### QUESTIONS

1. May a New Mexico State chartered savings and loan association purchase the assets, which include two branch offices located more than 100 miles from the purchasing association's principal office, and assume the liabilities, of another State chartered savings and loan association?
2. Does Section 58-10-87 NMSA 1978 of the Savings and Loan Act, Sections 58-10-1 **et seq.** NMSA 1978, require either a vote of the stockholders of the acquiring New Mexico State chartered savings and loan association, or the approval of the Savings and Loan Supervisor, in order to effect such a purchase and assumption?

### CONCLUSIONS

1. Yes.
2. No.

### ANALYSIS

Section 58-10-3 NMSA 1978 of the New Mexico Savings and Loan Act, Sections 58-10-1 **et seq.** NMSA 1978 (Savings and Loan Act) requires all State chartered savings and loan associations to be corporations. As a corporation, an association is granted by Section 58-10-33, NMSA 1978 of the Savings and Loan Act all the powers of a corporation, and all powers "incident to, or necessary for, . . . carrying on its business." Section 53-11-4 NMSA 1978 of the Business Corporations Act, Sections 53-11-1 **et**

**seq.** NMSA 1978, authorizes corporations to purchase real and personal property and to acquire liabilities of other corporations. The Savings and Loan Act and the Business Corporations Act therefore authorize an association to acquire another association's assets and liabilities.

## OPINION

Moreover, the New Mexico Supreme Court has ruled specifically that the Savings and Loan Act permits one association to acquire another's branches. In **Equitable Building and Loan Association v. Davidson**, 85 N.M. 621, 515 P.2d 140 (1973), the Court held that one association could both purchase another's branches and conduct business at those branches without a hearing being held pursuant to Section 58-10-17 NMSA 1978 (1982 Cum. Supp.) of the Savings and Loan Act.

Finally, Savings and Loan Bureau Regulation 80-3 S&LB, which was adopted pursuant to Section 58-10-17D NMSA 1978 (1982 Cum. Supp.) of the Savings and Loan Act, permits the operation of such branches even if they are more than 100 miles from the association's principal place of business if the application for branch approval is made after 1 July 1980.

{\*298} With regard to your second question, Section 58-10-87 NMSA 1978 of the Savings and Loan Act provides:

"Pursuant to a plan adopted by the board of directors and approved by the supervisors [supervisor] as equitable to the members of the association and as not impairing the usefulness and success of other properly conducted associations in the same vicinity, an association may reorganize or merge or consolidate with another association or federal association. The plan of reorganization, merger or consolidation shall be approved by a majority of the total vote of the members or stockholders who are entitled to vote. Approval may be voted at either an annual meeting or at a special meeting called to consider the action. In all cases, the corporate continuity of the resulting corporation shall possess the same incidents as that of an association which has converted in accordance with the Savings and Loan Act."

The board of directors of a savings and loan association is therefore required to obtain both the Savings and Loan Supervisor's approval and the vote of the association's stockholders on any plan for the reorganization, merger, or consolidation of the association with another association. This is not required, however, if the entire transaction consists of a purchase of assets and assumption of liabilities. In **Pankey v. Hot Springs National Bank**, 46 N.M. 10, 119 P.2d 636 (1941), the New Mexico Supreme Court considered a claim by Pankey against the Hot Springs National Bank based upon that bank's purchase of all of the assets, and assumption of the "ledger liabilities", of another bank against which Pankey had a judgment. Although his judgment was not one of the "ledger liabilities", Pankey argued that the Hot Springs National Bank was liable to him because it was a merged bank which was therefore responsible for all of the liabilities of the bank which it had acquired. The Supreme Court

disagreed, holding that the "mere purchase of the assets of one corporation by another for a sufficient consideration is neither a merger nor a consolidation."

This holding is equally applicable to savings and loan associations. There is not necessarily a merger or consolidation of two associations if one purchases the other's assets and assumes its liabilities. Each association will continue to exist as a separate corporation. Unless the purchase and assumption results in a merger, consolidation, or reorganization, Section 58-10-87 NMSA 1978 does not require either approval by the Supervisor or a vote of the acquiring association's stockholders.

**ATTORNEY GENERAL**

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