

## Opinion No. 14-1149

January 9, 1914

**BY:** IRA L. GRIMSHAW, Assistant Attorney General

**TO:** State Corporation Commission, Santa Fe, New Mexico.

### **SAVINGS BANKS.**

Savings bank cannot amend its articles of incorporation so as to include powers of a trust company.

### **OPINION**

{\*1} Answering your request for opinion as to the right of the Peoples' Savings Bank of Silver City to amend its charter so as to include the endowment of powers of a trust company, I beg to advise that after a limited, but careful, study of the proposition, I am of the opinion that the laws of New Mexico do not permit any such amendment.

This bank was created under Sections 260, et seq., of the Compiled Laws of 1897, as amended by Chapter 56 of the Laws of 1901. The powers thereby conferred are the powers ordinarily exercised by savings banks.

Incorporated trust companies are created under Chapter 52 of the Laws of 1903, as amended by Chapter 133 of the Laws of 1909. The powers of the two organizations are quite separate and distinct. The distinguishing features of the two are that in a savings bank's articles there must be named at least three incorporators, whereas in a trust company's articles there must be named at least seven incorporators; that a trust company in a city of less than 7,000 persons must have a subscribed capital of not less than \$ 100,000.00, \$ 50,000.00 of which must be paid in in cash, to the directors of the company, -- whereas the entire capital stock of a savings bank must be paid in, in full; that a savings bank receives deposits which are subject to withdrawal by check, whereas the money held by a trust company is not subject to check.

Under Sections 30 and 31 of Chapter 79 of the Laws of 1905, savings banks are permitted to amend their articles. They may change the nature of the company's business, etc., but it is provided, however, that such change and alteration shall contain only such provisions as it would be lawful and proper to insert in an original certificate of incorporation made at the time of making such amendment. Now the acts permitting the incorporation of savings banks, is separate {\*2} and distinct from the act permitting the incorporation of trust companies. We hold that the People's Savings Bank can amend its charter only by adding to, or taking away, some or any of the powers now authorized by law to be exercised by savings banks; that the amendment cannot include the investure of powers granted unto a different class of corporations and that, therefore, the amendment should not be permitted.

The logic of this holding is apparent. Any other reasoning would be contrary to the basic principles of corporation law. Also an anomalous condition would result. The bank's capital stock is now \$ 100,000.00. Under the savings bank acts the entire \$ 100,000.00 would have to be paid in cash unto the treasurer of the concern, whereas under the trust company act, only \$ 50,000.00 would have to be paid in to the directors of the company. The two mandates are irreconcilable and impossible of accomplishment, although the bank could not legally transact business until the entire capital of \$ 100,000.00 had been paid in.

A contrary holding would permit three persons to be named as incorporators of a trust company, whereas the law provides that not less than seven shall constitute the number of necessary incorporators.

The amendment, if permitted, would have the effect of creating a new corporation, whereas an amendment cannot legally create a corporation, but can only add to, or take away, powers the law authorizes the creature of the statute to exercise.

We return all papers to you.

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