

## Opinion No. 17-1957

March 27, 1917

**BY:** MILTON J. HELMICK, Assistant Attorney General

**TO:** Hon. A. G. Whittier, Traveling Auditor, Santa Fe, New Mexico.

Traveling Auditor Should Investigate Moneyed Corporations As Well As Ordinary Banks.

### OPINION

You have turned over to this office your letter of March 17th to the Stockmen's Guaranty Loan Company, of Albuquerque, and their reply thereto under date of March 20th, and you ask our opinion of your rights and duties in the matter as disclosed by the two letters. Your letter is an announcement that you will make an investigation of the company and their reply is the statement of a refusal to permit you to make such examination.

Section 5348 of the Compilation of 1915, makes it your duty to visit and investigate

"each of the banking, building and loan associations, savings and **other moneyed corporations** created under the laws of this state."

Your right to make an examination of the Stockmen's Guaranty Loan Company will therefore depend upon the character of the company and whether or not it falls within any of the classifications contained in the section quoted. It is obvious that the company in question will not fall within the classification of banking, building and loan or savings banks. It must, therefore, be determined whether or not it is a "moneyed corporation" within the meaning of Section 5348.

The Stockmen's Guaranty Loan Company, I understand, makes a business of loaning money on live stock. According to the charter of the company, which I have examined, it is their object, among other things, to make loans upon real or personal property, to provide investments in real estate, to receive, distribute and borrow money, to do a promotion and brokerage business, to buy, sell and deal in negotiable and other marketable securities and to deal in stock of other corporations. The above objects, we are to presume, indicate the character of the company in question.

It next becomes necessary to determine what is a "moneyed corporation." The term "moneyed corporation" has been frequently defined both by statute and by courts, sometimes in restrictive fashion and sometimes broadly. In the New York Incorporation Statute the term was defined as:

"Every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances."

However when it became necessary to define the term in connection with the taxation statute, which contained no definition, Judge Paige of the New York Supreme Court said:

"I cannot see the propriety of limiting the term 'moneyed corporations' to corporations having banking power \* \* \* Both banks and insurance companies deal in money and in the business of loaning money and there can be no impropriety, therefore, in embracing within the definition of moneyed corporations, insurance companies as well as banks."

Mutual Insurance Company v. Erie County, 4 N. Y. 442.

Later the corporation law of New York provided that a moneyed corporation is a corporation formed under the banking or insurance law of the state. This includes mutual loan corporations, trust companies and mortgage and loan investment corporations.

The Supreme Court of Kansas, in a case which elaborately digested the various definitions of the term as given by various authorities, came to the conclusion that the term "moneyed corporations" depended upon the context of the statute in which it was used to a great extent, but that the ordinary and usual meaning of the term was simply a private corporation having a capital stock and employing money for gain as distinguished from those not designed for pecuniary profit.

State v. Chance, 108 Pac. 791; 20 Ann. Cases 134. at the end of this decision as reported in the Annotated Cases cited above, there is a note containing an elaborate review of the various definitions of the term "moneyed corporations." From this note and the examination of many authorities it appears that the broad, rather than the restricted, definition has generally been applied to the term. In our statute, No. 5348 cited above, it seems to me that by applying familiar principles the term "moneyed corporation" is not to be defined in the broad sense, but is used in a more restricted sense of applying to a corporation similar to the classification with which it is associated. It seems to me that the term in this statute applies to a corporation that deals in money and engages in **quasi** banking functions and does not apply to private corporations generally. A consideration of the object and character of the Stockmen's Guaranty Loan Company seems to disclose that it is a **quasi** banking corporation and is similar in many ways to other banking companies. It receives, distributes and borrows money, it makes loans on real estate and personal property, it buys, sells and deals in negotiable paper, and its letterheads carry the words "Live Stock Loans."

It therefore is my opinion that the Stockmen's Guaranty Loan Company is a moneyed corporation within the meaning of the statute, -- Section 5348. I might say in substantiation of this conclusion, that even under the very specific New York definition first quoted above, insurance companies, mortgage companies and trust companies

have been held to be moneyed corporations. Certainly then in this state in the absence of a statutory definition of the term, and considering the usual broad definition of the term, I think we are justified in concluding that the term as used in Section 5348 is intended to cover also such corporations as deal in money and perform some banking functions.

In view of the foregoing, it is my conclusion that you have the right, and it is your duty, to examine the company in question as provided by Section 5348.