

Opinion No. 18-2081

January 31, 1918

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Honorable A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Traveling Auditor Must Examine Building and Loan Associations Without Charge.

OPINION

We have your favor of the 30th instant, wherein you ask whether your office has authority to charge for the examination of building or loan associations, or if the examination of such associations is to be made as that of public offices, without charge.

Under the law, as it existed prior to 1915, the examination of all banks and building and loan associations was vested in the Bank Examiner; and under the provisions of Sections 467 and 469 of the Compilation of 1915, it would seem that a fee was charged for the examination of building and loan associations, the same as other banks. But the legislature of 1915, by means of Chapters 59 and 67, apparently separated the examinations of banks and building and loan associations, and vested the examination of strictly banking institutions in the Bank Examiner, while the examination of public offices and building and loan associations was given to the State Traveling Auditor. At least such is the effect of the two chapters in my opinion. Under the provisions of said Chapter 59, which defines the duties of the State Traveling Auditor, there is no provision for the collection of any charges for his examination. In Chapter 67, which defines the duties of the Bank Examiner, there is a provision for the collection of examination charges from banks, but, in my opinion, such provision cannot be made to apply to the duties of the State Traveling Auditor. It also seems to me that by reason of the enactment of Chapters 59 and 67 of the Laws of 1915, Sections 467 and 469 of the Compilation of 1915, are not effective. It is a general rule of law that an officer who seeks to collect a fee must point to some clear provision of the law authorizing it.

In view of the foregoing, it is my opinion that there is no authority for your office to charge for the examination of building and loan associations, but, on the contrary, it seems to me that the examination of such institutions is put upon the same plane as the other examinations made by your office, which are without charge.