

Opinion No. 19-2437

November 29, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. L. H. Roseberry, Trust Attorney, Security Trust & Savings Bank, Los Angeles, Calif.

Authority of Foreign Banking Corporations to Make Loans in New Mexico.

OPINION

We have your letter of the 19th instant, advising us that you have been informed by the Secretary of State that your letter of November 10th has been referred to this office for reply.

You desire information regarding the right of your banking institution to do certain acts within the State of New Mexico.

While the reply to the questions suggested in your letter are not such as strictly fall within the duties of this office, and although we are prohibited by law from acting as advisers to individuals and persons in their private capacity, we will undertake to comply with your request, although we are of the opinion that the matter should be handled by your own attorney.

There is no statutory enactment prohibiting your bank from making loans on real and personal property in New Mexico or to act as trustee under local bond issues, but there is a prohibition against a foreign person acting as executor of a will of residents of this state. Section 2223, Code 1915, provides that,

"Non-residents of this state; minors; judicial officers; persons of unsound mind, or who have been convicted of any felony, or of a misdemeanor involving moral turpitude,"

shall not be qualified to act as executors or administrators.

We construe this to mean that a foreign corporation not admitted to do business in this state would be disqualified from acting as an executor or administrator.

By reason of our corporation laws, however, a foreign corporation is not authorized to file suit in the courts of this state unless it has complied with the laws regarding the "doing of business" in the state, and in this respect, of course, your bank would not, unless it file a copy of its certificate of incorporation or charter with the State Corporation Commission, be entitled to the benefit of our courts.

The corporation laws of New Mexico are contained in Chapter 23, Code 1915, pages 342 to 393. I assume that this volume will be available in some of the law libraries in your city.