

Opinion No. 20-2477

February 2, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

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

Banks Increasing Capital Stock to Sum of \$ 25,000 Not Required to File Amendment to Charters.

OPINION

Referring to your oral request for an opinion regarding the provisions of section 8, Chapter 67, Laws 1915, providing for the increase of the capital stock of banks to an amount not less than \$ 25,000, and to the requirement therein provided for the filing of a certificate setting forth such facts with the State Corporation Commission and State Bank Examiner; and the provisions of section 5, Chapter 120, Laws 1919, which provides that amendments of certificates of incorporation of a bank shall be governed by the act governing amendments and certificates, and full compliance shall be had with the provisions of the general incorporation act regarding amendments, we would advise you as follows:

In our opinion the provisions of section 8, Chapter 67, Laws 1915, requiring the filing of a certificate showing that the capital stock of the bank had been increased in conformance with the requirements of the act is intended to be in lieu of the amendment to the articles of incorporation provided for in section 5, Chapter 120, Laws 1919.

Section 8, Chapter 67, Laws 1915, requires that banks should perform certain acts and file notice of a compliance with the act. The provisions of this section are mandatory..

Section 5, Chapter 120, Laws 1919, alludes in our opinion, to amendments of articles of incorporation filed by corporations at their own discretion or when the acts covered by such amendments are the voluntary acts of the corporation. Any other construction would make the provisions of section 8, Chapter 67, Laws 1915, meaningless, for there could be no use for the certificate provided for therein if in addition a formal amendment approved by the Bank Examiner should also be required.

We therefore advise that in complying with the provisions of section 8, Chapter 67, Laws 1915, in regard to the filing of the certificate, banks need not submit a formal amendment to their articles which must be approved by the Bank Examiner.