Opinion No. 20-2565

May 5, 1920

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. J. B. Read, State Bank Examiner, Santa Fe, New Mexico.

Amount Which Banks May Loan to Officers and Directors and Customers; Use of Term 'Trust Company."

OPINION

We have your letter of the 3rd instant submitting three questions concerning which you desire opinions from this office, as follows: --

1. Do the provisions of Section 35, of the New Mexico Bank Act (Section 20, Chapter 120, Laws 1919), prohibit an officer, director or employe of a state bank from becoming indebted to the bank in excess of ten per cent of the paid-up capital and surplus of such bank, that is, may such a person become indebted to the bank in the sum of ten per cent of the paid-up capital and surplus and become and endorser upon the paper of some other person for a sum equal to ten per cent of such paid-up capital and surplus?

In our opinion the person named must not exceed ten per cent of the paid up capital and surplus in the aggregate of his own indebtedness, and the endorsements upon the paper of others. The section of the statute reads that,

"No officer, director or employe of any bank shall become a borrower from said bank or endorser for any person, firm, or corporation borrowing money therefrom, for any amount in the aggregate in excess of ten per cent of the paid up capital and surplus of such bank."

In the use of the words a borrower or endorser for any amount in the aggregate in excess of ten per cent, the statute directly limits the amount for which the person named does or may become liable to the bank, whether as a direct borrower or indirectly by indorsement. We, therefore, answer your first inquiry in the negative.

2. The second inquiry involves the right of a customer to become indebted to the bank directly in the sum of twenty per cent of the paid up capital and surplus and in an additional sum as endorser for some other person. This section provides that

"No bank shall become the creditor of any person, firm or corporation * * * in an amount exceeding twenty per cent of its capital and surplus," etc.

If a person would be permitted to borrow from the bank the maximum amount named, and in addition to become endorser upon a paper of some other person, the bank might

become the creditor of such person in the event of the secondary liability becoming primary, and, therefore, the section would be violated. It is, therefore, our opinion that a bank may not become a creditor of any person in excess of the sum of twenty per cent as named therein, and that such twenty per cent would include any liability of such person as endorser upon the paper of others. We, therefore, answer your second inquiry in the negative.

3. Your next inquiry involves the right of a bank to use the words "trust company" without having a paid up capital of $ 100,000, the said bank making no pretense to exercise the privileges and prerogatives of a trust company, it having organized prior to the year 1915.

We find no prohibition against the use of the words "trust company" by a bank, and, therefore, are of the opinion that a bank may use such words in its corporate name and still have a capital in an amount less than the $ 100,000 provided for trust companies, in the event that such bank should not engage in business of a trust company.