

Opinion No. [29-04]

March 1, 1929

TO: Office of the Attorney General of New Mexico

BUILDING AND LOAN ASSOCIATIONS -- Must comply with requirements of Chapter 18, Code 1929.

OPINION

Reference is made to your letter of Feb. 21, 1929, re Commonwealth Building and Loan Association and Hot Springs Building and Loan Association of Hot Springs, New Mexico (No Stockholders' Liability) accompanied by the proposed Certificates of Incorporation of these companies, from which you say it appears they are attempting to incorporate under the provisions of the General Incorporation Act.

You advise that the Commission has taken the stand that building and loan associations must incorporate in accordance with Chapter 15 of New Mexico Statutes Annotated, Codification of 1915, and that there is no authority for such organizations to incorporate under the General Incorporation Act, and you request an opinion from this office relative to this matter.

In states in which no statutory provision has been made for the creation of such associations they may be organized as voluntary associations or may incorporate under the General Incorporation Law, but where statutory provision for incorporating has been made they must incorporate thereunder and in substantial compliance with such statutes.

Chapter 15 of the New Mexico Statutes, Codification of 1915 is a special act applying to the organization of building and loan companies and chapter 79 of the Laws of 1905, chapter 23 of the Codification, as amended, is the General Incorporation Act. Sections 131 and 132 of the General Act (1014 and 1015 of the Code) make the provisions of that act applicable to corporations incorporated under certain special acts, among which is the act above referred to as chapter 15 of the Codification of 1915. The later act, that is the General Incorporation Act, does not repeal the former and special act and only makes the provisions of the General Act applicable to such corporations in so far as such provisions can be enforced consistently with the provisions of the special act. In discussing the effect of Sections 131 and 132 upon the provisions of the special act, the Supreme Court of New Mexico in *Jones v. Rankin et al*, 140 Pac. 1123, said:

"Section 131 extends the provisions of the general act to certain corporations organized under special acts, including the act in question in this case, and further provides for the organization of such corporations under the general act. But the same section also provides:

"But, provided, however, that this act shall not be held to divest the corporations incorporated under any of said acts of any rights, privileges or franchises which such corporations now have. And all the provisions of said act as to organization, powers, capital stock, stockholders' liability and suspension shall apply to any company organized under this act and doing business in the territory of New Mexico.'

"Thus clearly evidencing an intention to make the provisions of the general act apply to such corporations only in so far as the provisions of the general act did not conflict with the exceptions stated. The proviso left intact the provisions of the special acts as to organization, powers, capital stock, stockholders' liability, and suspension. This is made even more manifest by the provisions of the next succeeding section of the general act, which provides:

"The acts referred to in the last preceding section shall not be held to be repealed by this act, but the provisions of this act and the provisions of said acts shall be construed together as one act, and the general provisions of this act relating to the management, control, reports, amendments, stock liability, levy upon property or corporations, levy and sale of stock, and all other general provisions contained in this act which can be enforced consistently with the provisions of the said special acts hereinbefore referred to shall be held to apply to all such corporations'."

From an examination of the statute herein referred to and aided by the discussion thereof above quoted we are led to conclude that building and loan associations incorporated in this state must comply at least substantially with the provisions of the special act as to **organization, powers, capital stock, stockholders' liability and suspension**, and may avail themselves of the provisions of the general act only in so far as such provisions can be enforced consistently with the provisions of the special act, i. e., the provisions of the general act relating to **management, control, reports, amendments, stock liability, levy upon property or corporations, levy and sale of stock**, and other general provisions enforceable consistently with the special provisions may be made available.

The purposes for which a building and loan association may be incorporated in this state are those mentioned in Section 522 of the Codification: "for the purpose of building and improving homesteads, and loaning money to the members thereof * *."

The same act, Section 6, authorizes the loaning of money to persons not shareholders, under specified conditions.

It seems to be a rule of law that a corporation cannot be formed under a statute for the specific purpose specified therein and also for an additional purpose not specified. Any purpose fairly within the terms of the statute or necessarily incident thereto is permissible.

In our opinion your attitude as expressed in the second paragraph of your letter, that building and loan associations must conform to the requirements of Chapter 15 of the

Codification, is correct, and charters should be withheld from the proposed companies noted at the top of this letter until changes bringing them within the requirements of that chapter have been made in the proposed articles of incorporation.

The Articles of Incorporation of Hot Springs Building and Loan Association of Hot Springs, New Mexico (No Stockholders' Liability) and the Certificate of Incorporation of Commonwealth Building and Loan Association, which accompanied your letter, are herewith returned.