

Opinion No. 31-102

March 27, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. Lawrence A. Tamme, State Bank Examiner, Santa Fe, New Mexico.

{*55} Under date of March 27th you have referred to this office sample copy of certificate issued by the Republic Thrift Syndicate of Denver, Colorado.

Under this certificate the said company accepts certain monthly payments in advance for a certain period of months and promises to pay the owner of this certificate at the date of maturity a certain specified sum of money.

You desire to know if the acceptance of money by this company under these conditions comes within the definition of "banking" as defined in section 1 of Senate Bill No. 53 passed by the last session of the Legislature.

Section 1 of the said Act defines the term "bank" in the following language "that the term 'bank' shall include any person, firm, association, or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business and engages in the business of lending money so received on deposit, whether such deposit is made subject to check or is evidenced by certificate of deposit, a pass-book, a note, a receipt or other writing, etc." We have read the case of Security and Bond Deposit Company vs. State cited in 105 . S. R. at page 113 and to which you referred to in your letter.

Our statute under consideration is almost identical with the Ohio statute except our statute includes in the definition of a bank under section 1 these words "and engages in the business of lending money so received on deposit."

Under the wording of this statute before any person, firm, association, or corporation could be construed to be a bank it is my belief that they must not only accept the money on deposit as a business, but must also engage in the business of lending the money so received on deposit.

The question of lending the money was not involved in the Ohio case for the reason that this term was not included in the Ohio statute.

In the case you have submitted to us it is apparent from the face of the certificate that the monthly payments are received on deposit, and so far as this fact is concerned, it comes within the statute.

It is not clear, however, that this company also engages in the business of lending the money so received on deposit and as pointed out in a preceding paragraph we think

there must be a concurrence of the 2 acts in order to bring the company within the definition of a bank.

The word "engages" in the statute should probably be "engaging", but I have checked the enrolled and engrossed {*56} bill on file with the Secretary of State and find that the word used is "engages".

At any rate, said Senate Bill No. 53 does not carry the emergency clause and, therefore, does not become effective until the expiration of ninety days.

Trusting the foregoing is the information you desire, I am

By Frank H. Patton,

Assistant Attorney General