

Opinion No. 31-192

June 23, 1931

BY: Frank H. Patton, Assistant Attorney General

TO: Hon. John Bingham, State Bank Examiner, Santa Fe, New Mexico.

{*81} You letter of June 22nd, in which you request an opinion as to the validity of Senate Bill No. 53, has been received, and you have directed our attention especially to the title of the act.

You also desire our opinion on the word "deposit", as used therein, and, inasmuch as we are receiving numerous inquiries in this regard, we make haste to summarize for your benefit our views concerning this bill.

The title of the act reads as follows: "An act defining the business of banking, prohibiting the use of the word 'bank' and providing penalties therefor."

It requires no concentration to determine at a glance that as a matter of fact the fact does not define banking. It, in effect, only provides that the term "bank" shall include any person, firm, association or corporation soliciting or receiving money or its equivalent on deposit as a business and engaging in the business of lending money so received on deposit.

Also the body of the act is more comprehensive than the title in that the title only shows a prohibition of the use of the word "bank", whereas, the body of the act prohibits the use of the words "bank", "banker", "bankers," "banking", "national", "savings", or "trust" or words of similar meaning in any foreign language, as a designation or name or a part of a designation or name under which business is or may be conducted in this state.

The title further shows a provision for a penalty for the use of the word "bank", but there is no penalty in the body of the act providing for the use of any of the other aforementioned terms and no penalty could attach for the use of any of these words which are not included within the title of the bill.

In our opinion the law is invalid as a provision in a bill entirely without the scope of the title is void. State vs. Canelaria, 28 N.M. 573, 215 Pac. 816. Also our State Constitution in Article 4, Section 16, provides in part as follows: "The subject of each bill shall be clearly expressed in the title and no bill embracing more than one subject shall be passed. * * *" The subject of this bill is certainly not clearly expressed in its title.

Your question on deposits presents a more difficult question, and, in view of the foregoing, it is perhaps not necessary to answer it. However, we will say that in our opinion only such deposits as are commonly or ordinarily handled in a legal banking business are within the commonly accepted meaning of the term contemplated by the

act. Where the deposit is in fact and to all intents and purposes an investment of the funds of the so called depositor, then we believe such transaction not within the provisions of this bill.

We have already held in previous opinions that persons, firms, associations or corporations now engaged in doing business within this state cannot be required to change their names, and that such change would constitute a violation of the obligation of contract.

We have further held that the act is discriminatory as applied to strictly mutual foreign building and loan associations, not organized under the laws of this state.

In our opinion the entire bill is unconstitutional and cannot be enforced.