

**Opinion No. 41-3751**

March 27, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Nolan P. Walter State Bank Examiner Santa Fe, New Mexico

{\*50} This will acknowledge receipt of your letter dated March 26, 1941, in which you request an opinion from this office as to whether or not a state bank with a capital stock of less than \$ 100,000.00 and not incorporated as a trust company may act as an executor or administrator in this state.

Section 47-108, New Mexico Statues Annotated, 1929 Compilation, provides:

{\*51} "National banks, organized under the national bank act and resident within this state, state banks and trust companies organized under the laws of this state, and persons capable of making a will, may be appointed executors or administrators. In case of the appointment of a corporate executor or administrator, as above provided, the oath required by law shall be made by the president, vice president or cashier of said corporate executor or administrator for and on behalf of said corporation; Provided, that the national banks which have qualified under the provisions of the national bank law to act as executors or administrators shall be exempt from giving bond under the laws of the state of New Mexico for the faithful performance of their duties as such executors and administrators." (Chapter 47, Section 1, Laws of 1929)

The above act was passed at a time subsequent to the passage of the State Banking Act (Chapter 67, Laws of 1915; Section 13-101, et seq., 1929 Compilation).

In view of the foregoing, I am of the opinion that a state bank, regardless of the amount of its capital stock, and notwithstanding the fact that it is not incorporated as a trust company, unless expressly prohibited from doing so by its charter, may act as administrator or executor in this state.

Trusting that the foregoing sufficiently answers your inquiry, I am