



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Leo Brody, Commissioner,
Department of Banking
Austin, Texas

Dear Sir:

Opinion No. O-2066
Re: R. C. U., Article 502 --
Procedure in converting
a state bank into a national bank.

We beg to acknowledge receipt of your letter of February 27, 1940, propounding to this Department for a legal opinion the following question, to-wit:

"1. Can a state bank, by following the provisions of Article 502, and also following the provisions of the national banking act relative to entry into the national system, convert into a national bank?

"2. If Question No. 1 is answered in the negative, then what are the duties of the Banking Commissioner relative to a bank which has ineffectually undertaken to convert under the provisions of 502? Is it the duty of the Banking Commissioner to proceed with examinations and supervisions of the bank and to collect the fees in lieu of examination fees, as provided by law, relative to state banks?"

A request by your predecessor, Honorable Z. Gossott, of date January 8, 1937, addressed to the Attorney General, propounded the following question:

"1. Does the provision of that Article (502 of the Revised Civil Statutes of Texas) for conversion of a state bank or

bank and trust company 'into any other system of banking' mean a state system, such as the existing guaranty fund system, or non-security system, or does it mean a conversion from a state bank into a national bank?"

In the same connection it was stated:

"This department has advised its state banks who desire to nationalize, that Article 502 contemplates only a conversion from one system of security to another system of deposit security as the law existed at the date of that enactment, and that a state bank converting into a national would yet be required to liquidate its affairs under Articles 539 and 540 above cited. Please kindly advise this department."

The Attorney General's department, in an opinion written by Honorable W. W. Month, Assistant Attorney General, under date of February 8, 1937, advised the Commissioner as follows:

"It is apparent to the mind of the writer that the language in said Article 502, 'into any other system of banking,' means a state system such as the guaranty fund system, or bond security system. Attention is specially called to the last sentence of said Article 502 in which the guaranty fund law and bond security law of this State is expressly mentioned, and to Article 543 of the Penal Code of the State of Texas, which was passed by the same Legislature that passed Article 502 of the Civil Code which particularly refers to guaranty fund and security plans as the guaranty fund system and bond system of the State banks of Texas."

That request to the Attorney General's department followed a series of opinions rendered by the writer as counsel to the Banking Commissioner to the same effect, as

the answer above shown.

Opinion No. 198, addressed to Mr. Brant, Banking Commissioner, June 26, 1934, dealt with this precise question, and among other things the opinion stated:

"I beg to say, there is no provision in our statute (nor could there be) providing the complete details of a so-called conversion of a State Bank into a National Association. In the very nature of things, the State Corporation is in all respects subject to the State law, whereas the National Association in respect to its organization is governed by Federal Laws."

In opinion No. 616, addressed to Mr. H. A. Jamison, departmental examiner, under date of December 4, 1939, it was said:

"Article 602 is now meaningless. That is to say, the system contemplated in the statute authorizing a sale or conversion 'into any other system of banking' has reference only to the former guaranty fund system and the former bond security system, securing deposits. Since these enactments, intended to guarantee deposits, have been repealed (General Laws, 46th Legislature, regular session, 1937, p. 19) the Article enacted in 1923 has become obsolete. (See C. T. J. p. 137). There is nothing upon which it can operate. That it originally contemplated only a change from the guaranty fund plan to the bond security plan or vice versa is apparent for several reasons."

The same view was expressed in opinion No. 642, likewise addressed to Mr. Jamison, under date of February 10, 1937.

The soundness of these opinions, we think, is attested by the following Supreme Court decisions: Texas Bank & Trust Co. v. Austin, Banking Commissioner, 280 S. W. 131; First State Bank et al, v. Collier, 23 S. W. (2) 716.

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You are therefore advised it is the opinion of this department that Article 502 of the Revised Civil Statutes has no reference whatever to the so-called conversion of a state bank, or bank and trust company, into a national association. The organization of a national association is determined wholly by the laws of the United States, and is largely in the hands of the Comptroller, and whatever satisfies those laws and that official will suffice to organize a national association, whether its assets or capital stock consists of original contributions or those of some other existing institution transferred to the association for the purpose of organization.

From this it follows that your second question should be answered to the effect that the retiring state bank transferring its assets and affairs to a proposed or newly organized, or even an existing national association, does not thereby lose its corporate existence or its legal entity, but the bank must thereafter be liquidated, either through the process of voluntary liquidation under Articles 639 and 540 of the Revised Civil Statutes, or through the process of a taking over by the Banking Commissioner.

Trusting that what we have written will have answered your questions satisfactorily, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Spoor

Ocie Spoor
Assistant

OS-MR

APPROVED MAR 8, 1940

Gerald Mann

ATTORNEY GENERAL OF TEXAS

