

**OPINION
46-28**

March 18, 1946 (OPINION)

BANKS AND BANKING

RE: Sales of Stock

This is in reply to your letter of February 25 addressed to the office of Attorney General, with reference to the propriety of certain stipulations proposed as part of subscription to stock and contents of same in stock certificates and in the by-laws of a proposed banking association.

The proposed stipulations are stated in your letter, and are as follows:

It being one of the purposes of this corporation to provide proper banking facilities for the community where it is located, which is best accomplished by having resident, active stockholders, it is hereby expressly provided, that no person shall be eligible as a stockholder of this corporation unless a resident of North Dakota.

It is also made a part of the contract of subscription to stock in this corporation, or of the purchase of stock, that in order to carry out the provisions of this article every stockholder, before selling or transferring such stock belonging to him, shall offer to sell the same to the other stockholders of this corporation at the book value of such stock at the time of such offer is made and in case such stockholders refuse to purchase the stock at book value, it may then be offered and sold to anyone willing to purchase the same.

The stockholders, acting through their president, are hereby granted the power to purchase at book value any share or shares of stock which may by any means or methods become the property of persons, firms or corporations ineligible to be stockholders in this corporation."

The question then raised is whether such stipulations are inconsistent with the banking laws of this state.

Section 6-0202 of the North Dakota Revised Code of 1943 provides as follows:

Banking Corporations: Who May Form. An association for carrying on the business of banking under this title may be formed by any number of natural persons, not less than three, at least two-thirds of whom shall be residents of this state. They shall enter into articles of association which shall specify in general terms the object for which the association is formed and which may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed and acknowledged by

the persons uniting to form the association and shall be filed in the office of the secretary of state."

You will observe that the statute quoted provides that the articles of association may contain such provisions as are not inconsistent with law, and which the association may see fit to adopt for the regulation of its business and the conduct of its affairs.

Briefly stated, the purposes of the proposed stipulations are to limit stockholders to residents of the state of North Dakota, and in case of transfer of stock, to prevent as far as possible the sale thereof to non-residents.

There is one stipulation which provides that the stockholders, through their president, are granted the power to purchase at book value any share or shares of stock which may by any means or methods become the property of persons, firms or corporations ineligible to be stockholders in the corporation.

We shall first discuss propositions No. 1 and 2 as stated in your letter since they are more or less related and cover practically the same purpose.

The first question then which arises is whether or not these propositions are inconsistent with the banking laws of this state, and particularly with Section 6-0202 which we have quoted herein.

We would also refer to subdivision 87 of Section 6-0302 defining the powers of a banking association, which provides as follows:

To provide, by its board of directors, by-laws not inconsistent with the laws of this state to regulate the manner in which its stock and property shall be transferred, its business conducted, and the privileges granted to it by law exercised and enjoyed."

Section 6-0328 also provides, among other things, that the capital stock of each association shall be divided into shares of one hundred dollars each, and shall be deemed personal property and transferable on the books of the association in such manner as may be prescribed by its by-laws or articles of incorporation.

The question which arises is whether or not the conditions and limitations in the matter of sales or transfers of stock, as set forth in propositions 1 and 2, would in any way affect or curtail the general banking powers granted or obligations fixed by the banking laws of this state.

The general banking powers are prescribed and defined by Sec. 6-0302, consisting of subdivision 1 to subdivision 11, both inclusive. we find nothing therein which either directly or by implication would prohibit the organizers of a banking association from including the limitations as to stock sales and transfers set out in propositions 1 and 2 in their articles of incorporation or their by-laws.

What I have said with reference to propositions 1 and 2 would apply with equal force to the third proposition by which the stockholders

authorize the president to purchase for them shares of stock from persons who under the provisions of the articles of incorporation or by-laws would be ineligible to purchase or to hold such stock.

The provisions in the three propositions which we have considered would be separate and aside from the general banking business of the corporation, and are simply agreements to which the stockholders bind themselves as a matter of general policy and to which they mutually agree.

It is my opinion, therefore, that the substance of the three propositions set forth in your letter could be embodied in a brief statement and made a part of the certificates of stock, after first having been approved by the State Examiner. Purchasers and prospective purchasers of stock could not be misled in any way because they would have full knowledge of the conditions and limitations imposed in connection with the purchase, sale and transfer of stock since the conditions thereof would be a part of the contract of purchase, sale and transfer of the stock.

NELS G. JOHNSON

Attorney General