

## Opinion No. 51-5454

November 7, 1951

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Dan R. Sedillo Acting Chairman State Corporation Commission Santa Fe, New Mexico

{\*164} This is in reply to your letter of November 6, 1951, in which you request an opinion from this office as to whether or not the Commission should accept or reject the petition for incorporation of three incorporators which represent husband and wife and one of their employees under the corporate name of Glorieta Chamber of Commerce and Tourist Bureau, Incorporated. You also state in your letter that you have a petition signed by several citizens of Glorieta protesting against the incorporation of said organization as a non-profit corporation. Mr. Garcia, your Chief Clerk, has informed me that this corporation undoubtedly wants to incorporate under Section 54-1301, N.M.S.A. 1941, which reads as follows:

"It shall be lawful for any debating society, literary, scientific, industrial or benevolent association or community, acequias or ditch associations or companies for mutual benefit and not for pecuniary profit or speculation, (other than colleges, universities, academies or seminaries) to elect at any meeting called for that purpose, not less than three (3) nor more than seven (7) persons to serve as trustees or directors, a secretary and treasurer and such other officers as may be deemed necessary, who shall hold their offices for one (1) year and until their successors are elected and qualified. Said corporation or association may have a common seal."

If this man, his wife and the employee are incorporating under the above quoted statute they are trying to qualify as being an association or community. From the number of signatures in the protest petition it is evident that this group, known as the Glorieta Chamber of Commerce and Tourist Bureau, is not a community organization or association and is merely a group composed of one family and an employee of said family.

The meaning of the word "community" is defined in Vol. 8, "Words & Phrases", on page 149, and reads as follows:

"The term 'community,' as used in Or. L. § 7230, providing that communities may be incorporated for the purpose of supplying inhabitants with water, should be construed to embrace and include all the inhabitants of a district having a community of interest in obtaining for themselves in common a water supply for domestic use, and such a district cannot include lands abundantly supplied by springs with good water; as any other construction would clearly violate the due process clause of the federal Constitution (Article 5, and Amendment 14, § 1)."

Therefore, if this association or corporation is a community corporation it should embrace and include most of the business people of Glorieta, but it only includes one family. It is, therefore, my opinion that it is evident from the petition of these incorporators and from the general purposes as set out in their Articles of Incorporation that it is not a community corporation or a non-profit corporation, but is an attempt to form a non-profit corporation by one family in order to promote their own business and not the business of the community as a whole.

It is my opinion that the Commission should give these people a hearing and determine for themselves the real purposes and objects of these people in trying to form this corporation, and if they do not substantially represent the {\*165} citizens of the community of Glorieta, especially business people, the Corporation Commission would be acting within its power to turn down this petition for incorporation. It is evident that this incorporation is not favored or has the backing and sympathy of the business people and residents of Glorieta; otherwise they would not have protested.

I trust that this fully answers your inquiry.