Opinion No. 54-6064

December 22, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: State Corporation Commission Santa Fe, New Mexico. Attention: Corporation Department

*{*539}* This is in reply to your request for an opinion of this office concerning the position of the Commission pertaining to fees charged foreign corporations upon the filing of certificates of increase in capital stock. You submitted as your immediate problem a situation where a foreign corporation had paid an admission fee to the State Corporation Commission upon filing its Articles of Incorporation, and now has filed an amendment changing its no par value common stock to that of par value and in connection therewith increasing the number of shares of common stock. You have stated that this corporation contends it is entitled to file the amendment without payment of any fee.

Of course, it is an administrative problem to determine if in any given situation an actual increase in capital stock has occurred. Furthermore, *{*540}* by previous opinion of this office, (Attorney General's Opinions 5967-5967A) together with a reading of the statute 51-12-1, subdivision 5, N.M.S.A., 1953, the fee is applied on the total increase, or to word it another way, the fee is applied to the differential between the new and old capitalization. From the facts submitted in the instant case, there does not appear to be any question but what the corporation with which you are now concerned proposed to increase the number of shares of stock and is thus increasing its capital stock. (See **State ex rel. Corinne Realty Co. v. Becker, Secretary of State,** 8 SW 2d 970.)

Therefore, we can see nothing that would prevent the Corporation Commission from collecting the same fees for the amount of the total increase in the capital stock, as specified in subsection 4 of Section 5-21-1, N.M.S.A., 1953.

For a good discussion of the problems herein related, see **Fletcher Cyclopedia of the Law of Private Corporations,** Sections 9052, 9053, 5128-5133.

The corporation is also claiming that since it was authorized to do business in the State of New Mexico before the enactment of the act specifying statutory fees for increased capitalization that said corporation is exempt from paying anything further. This is an interesting proposition, but one in which we see no merit. As we view the situation, the act in question does not attempt to retroactively collect fees for the initial charter, but applies prospectively for all future increases in capital stock. As stated at page 1,000 in the case of **Sovereign Camp, W.O.W. v. Casados, et al,** 21 F. Supp. 989:

". . . The well-settled rule indulges in the presumption that a statute shall have a prospective operation only, unless its terms show clearly a legislative intent that it should operate retrospectively or retroactively."

Also there is another rule of law expressed therein that is appropriate to this matter, which reads as follows:

"The statute does not violate section 10 of article 1 of the Constitution of the United States or section 19, article 2 of the Constitution of the state of New Mexico. A privilege or license to do business in a state is not a contract within the meaning of the above sections and does not vest in the holder thereof the right to enforce the same under such constitutional guarantees."

Therefore, even if the subject corporation had obtained a charter to do business in the State of New Mexico and had paid the necessary entrance fee before the enactment of the act specifying statutory fees for increased capitalization, nevertheless the corporation would be subject to the subsequent acts of the Legislature relative to fees for increases in capitalization.

By: J. A. Smith

Assist. Attorney General