

Opinion No. 65-227

November 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Mr. Barney Cruz, Director, Corporation Department, State Corporation Commission, Santa Fe, New Mexico

QUESTION

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Do the fees listed in Section 51-12-1, N.M.S.A., 1953 Compilation apply to a mutual building and loan association organized under Chapter 108, Section 1, Laws of 1889 and Chapter XV of the Compiled Laws of 1915 if such an association is increasing its authorized capital stock?

CONCLUSION

Yes.

OPINION

{*372} ANALYSIS

Section 51-12-1, N.M.S.A., 1953 Compilation insofar as applicable to your question reads as follows:

"Fees of corporation commission. -- On filing any certificate or other paper relative to corporations, domestic or foreign, including domestic insurance companies, but not including foreign insurance companies, in the office of the state corporation commission, the following fees and taxes shall be paid:

* * *

(2) Increase of capital stock of domestic corporations, ten cents (\$.10) for each one thousand dollars (\$ 1,000) of the total increase authorized, but in no case less than twenty dollars (\$ 20.00); Provided, however, in no event shall the fees for any or all increases of capital stock of domestic corporations exceed the sum of five thousand dollars \$ 5,000);"

In answering your question we must consider also Section 51-12-6 which provides insofar as applicable:

"Provisions of general law extended to special corporations. -- The provisions of this article shall be held applicable to corporations incorporated under the provisions of the following acts:

1. 'An act to authorize the formation of companies for the purpose of constructing irrigating and other canals and the colonization and improvement of lands,' approved February 24, 1887, and being section 468 to 494, inclusive, of the Compiled Laws of 1897, and also including section 467 of said laws:

2. An act entitled "An act for the incorporation of building and loan associations,' approved {*373} February 14, 1887, and all acts amendatory and supplementary thereto;"

It is apparent that Section 51-12-1, N.M.S.A., 1953 Compilation, is a part of article 12 which is referred to in the opening paragraph of Section 51-12-6, N.M.S.A., 1953 Compilation. It therefore becomes incumbent upon us to determine whether or not the statute under which the mutual association was organized is within the terms of Section 51-12-6, N.M.S.A., 1953 Compilation.

The documents in the files of the New Mexico State Corporation Commission indicates that the mutual association was incorporated under Chapter XV of the Compiled Laws of 1915. The articles of incorporation were actually filed in March of 1926. It is therefore apparent that the articles of the corporation were filed pursuant to Laws of 1889 of Chapter 108, Section 1, which comprised the enabling section of Chapter XV of the 1915 Compiled Laws.

Turning then to Section 51-12-6, N.M.S.A., 1953 Compilation, we ascertain that Chapter 108, Laws of 1889 is not specifically mentioned. The 1889 Session Law referred to would come within the section only if it is a law amending the Act approved February 14, 1887.

We next turn to the title of Chapter 108, Laws of 1889, and quote the same as it appears in the Session Laws:

"An Act to amend an Act Entitled 'An Act for the Incorporation of Building and Loan Associations' Approved February 14, 1887."

It is therefore clear that Chapter 108, Laws of 1889 is an Act amending "An Act for the incorporation of building and loan associations," approved February 14, 1887. It follows from this determination that a mutual association incorporated under Chapter 108 of the Laws of 1889 is subject to the provisions of Article 12 of the 1953 Compilation. In view of this directive of the Legislature we have no alternative but to conclude that the fees provided in Section 51-12-1, N.M.S.A., 1953 Compilation do apply to the mutual building and loan association mentioned in your question.