

Opinion No. 13-1135

November 15, 1913

BY: IRA L. GRIMSHAW, Assistant Attorney General

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

CORPORATION COMMISSION.

May issue commission to take depositions.

OPINION

{*317} Answering your oral request for opinion as to the right of your clerk to sign and issue a commission to take depositions, and as to the general sufficiency of the application for the issuance of a commission in the matter of the complaint the Postal Telegraph Cable Company vs. The Mountain States Telephone and Telegraph Company, I beg to advise the following:

That the commission must observe the same procedure as allowed by law in civil causes.

Under the laws of New Mexico the application for the issuance of a commission must file with the clerk of the court a notice of intention to apply for the commission to take answer to certain interrogatories thereof attached, the interrogatories and notice are filed together. A copy of the interrogatories and the notice must be served upon the adverse party, five days before the date of the proposed issuance of the commission. This is in order to permit the adverse party to file cross interrogatories, which it has the right to do at any time within the five days and before the commission issues.

The commission is tested as other process. In the matter of the procedure of the state commission, the word commission is used in lieu of word court, and clerk in lieu of the clerk of the court. The process in the courts is tested in the name of the clerk of the court, and therefore the clerk of your commission is authorized to test the commission to take answer to interrogatories.

The application for the issuance of a commission seems to be defective in this particular case. There appears no certificate or other writing to the effect that the adverse party has been served with a copy of the intention and interrogatories. It also appears that the application fails to specifically designate a certain person, other than the notary public, to take these depositions.

Section 1, of Chapter 122 of the Laws of 1903, provides substantially that the commission shall be addressed to any one of the persons mentioned in Section 3041 of the Compiled Laws at his or their place of business or residence, and that the street

number shall be stated in the commission and on the envelope. The purpose of this amendment was to inform the adverse party exactly before whom the commission was to be taken, and at what place. The papers in the matter under consideration fail to do this, but in lieu thereof, authorizes the taking of the depositions in the place of business of the deponents.

I suggest you obtain the set form of the commissions used by our District Courts for the reason that the laws in reference to taking of {*318} depositions and the duties of a notary and other persons are therein fully set forth.