

Opinion No. 14-1197

April 20, 1914

BY: IRA L. GRIMSHAW, Assistant Attorney General

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

WATER.

Irrigation companies require at least five incorporators to be named in articles of incorporation.

OPINION

{*55} In response to your oral request for opinion concerning the regularity, legality and validity of the proposed articles of incorporation of the Harroun Land Company, we advise that we have examined the articles and find recitations of matter therein which compel you, in our judgment, to refuse to accept and file these articles.

Without going into a detailed discussion of the articles, and without reciting verbatim the matter therein, it appears that this proposed corporation names but three persons as incorporators; that it intends to engage in operating, and conducting the business of an alfalfa stock farm and to improve, own, hold, acquire, sell, rent, etc., lands or interests therein. Under the general incorporation law a corporation organized by three incorporators may take advantage of the general incorporation act to engage in such objects of business.

Under Article VIII the incorporators seek to confer upon the proposed corporation all the powers incident to, conferred upon, and vested in companies incorporated under a special act of the legislature as irrigation companies. The special act permitting the incorporation of irrigation companies is Sections 467, et seq., of the Compiled Laws of 1897. It requires at least five incorporators to be {*56} named in the articles of incorporation. Section 5 of the general incorporation act specifically excludes the incorporation of irrigation companies under that act. While the articles in the present instance first name powers incident and belonging to corporations organized under the general incorporation act, they likewise name powers which only a corporation **organized** under the special act referring to irrigation companies can exercise. In our judgment, these latter powers cannot be conferred upon a corporation incorporated by but three named incorporators. If the number of incorporators named in the articles be changed to five, we see no reason why you cannot authorize them to do business as a corporation, but until that is done you have no authority in law to file the submitted articles.

We have no desire to stand upon technicalities in matters of this sort, but are obliged to follow the strict mandates of the law in this regard.