Opinion No. 16-1824

June 12, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Lewis V. Greer, 1206 Busch Building, Dallas, Texas.

Whether joint stock associations should qualify as foreign corporations before doing business in New Mexico.

OPINION

*{*388}* I have received your letter of the 9th instant in which you say that upon investigation of the New Mexico statutes you have come to the conclusion that a joint stock association, having its principal office in Texas, is not required to take out a permit to do business in New Mexico, but that you would like for me to let you know whether or not this is true, and ask my opinion on this matter.

I believe there is absolutely nothing in the statutes of New Mexico which makes any reference to joint stock associations, and consequently the first natural impression one would have is like yours, but I am not entirely satisfied that this would be correct.

I have not had time to make any exhaustive examination of authorities, but I have found one New Jersey case, of the Tidewater Pipe Company v. State Board of Assessors, reported in 27 L.R.A., at page 684, which makes me a little doubtful. You will find, upon examination, that a question decided in that case was as to whether the Tidewater Pipe Company, Ltd., which was a joint stock company of Pennsylvania, was, in New Jersey, for purposes of taxation, to be considered a corporation or not, and the court held that for New Jersey taxing purposes it must be considered a corporation, although the courts of Pennsylvania did not regard such associations as corporations. The court said that although that view might be entertained in the domestic forum, it was not conclusive upon foreign jurisdictions, and that if the association were invested, by the laws under which it came into being, with the essential characteristics of a corporation, it might be treated as one in other states.

There seems to be some reason to hold that this New Jersey decision would be applicable. By the statutes of Texas such associations may, like corporations, sue or be sued in any court of the state without making the individual stockholders parties to the suit, *{*389}* and a judgment in such suits is conclusive on the individual stockholders and members as if they were individually parties to the suits. Any judgment against the association is binding on the joint property of all members, although not binding on the individual property of the members, except so far as individual members may have been made parties and served with process.

The Texas statutes have also provisions that in suits against joint stock associations, process may be served on the president, secretary or treasurer, or upon the local agent in the county in which suit is brought.

Some of these things so provided appear to be characteristics of corporations, and at present I would not like to predict with any confidence what our courts would hold if the question were fairly presented, and in view of the statutory provision in Section 987 of the Codification of the New Mexican statutes, it might be hazardous, to say the least, for such an association to do business without having obtained a certificate from the State Corporation Commission that the association is authorized to transact business in this state. Section 597 provides that a foreign corporation shall not maintain any action in this state upon any contract made by it in this state until it has obtained the required certificate from the Corporation Commission.

Joint stock associations constitute a class of anomalous entities, generally held to be something between a corporation and a partnership, with some of the characteristics of each, although I find in some cases that courts have declared them to be simply partnerships with every member liable for all association debts, and the answer to your question is not at all easy, and I must say that I remain in great doubt about it.