

Opinion No. 16-1842

July 3, 1916

BY: FRANK W. CLANCY, Attorney General

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

State Corporation Commission's right to reject a corporation using a name so similar to another as to lead to uncertainty.

OPINION

{*402} Your letter of the first instant was received here on the day of its date, and I have given some consideration to the subject-matter thereof before attempting to answer.

You say that you have received a certificate for the formation, under the laws of New Mexico, of a corporation under the name "Chino Extension Development Company," together with checks for the payment of the initial fees for filing the certificate and certifying {*403} a copy thereof for recording and publication. You also say that Messrs. Wilson and Walton, of Silver City, New Mexico, attorneys for the Chino Copper Company, wrote you under date of May 29, 1916, protesting against allowing any domestic corporation to be named Chino Extension Company, or Chino Extension Copper Company, or Chino Extension Development Company, or anything similar thereto in which the word "Chino" would be the distinctive part of the corporate name.

Upon these statements, with the additional fact that the Chino Copper Company is a Maine corporation, you ask my advice as to what authority you have to entertain a protest of the kind presented by Messrs. Wilson and Walton, and also as to whether or not the name of the proposed corporation is in contravention of the prohibition contained in paragraph I of Section 891 of the Codification of 1915.

That prohibition is to the effect that in the certificate of incorporation "no name shall be assumed already in use by another existing corporation of this state, or so nearly similar thereto as to lead to uncertainty or confusion." I have made some examination of cases involving the question of similarity of corporate names, and from precedent, and as a matter of ordinary common sense, I have no doubt that the proposed name of the new company is so nearly similar to that of the Chino Copper Company as to lead to uncertainty and confusion, especially in view of the fact that the new company proposes to do the same kind of business in which the Chino Copper Company is engaged, and that the principal place of business of the new company is in the same county where the older company is operating. The Chino Copper Company is probably the largest mining company operating in New Mexico, and the use of the words "Chino Extension" would, to the ordinary mind, carry the idea that the new company is an off-shoot, or addition, or a connection of the Chino Copper Company.

The next question, however, is as to whether, within the meaning of the statute, the Chino Copper Company, a foreign corporation, can be considered as an "existing corporation of this state." I assume that it has come into this state by virtue of compliance with the requirements of Section 986 of the Codification, and is duly authorized to transact business in this state, the business being "such as may be lawfully transacted by corporations in this state." Section 985 provides that foreign corporations shall be subject to the provisions of our statutes, so far as the same can be applied to foreign corporations, and, after complying with the law, shall have the same powers and be subject to all liabilities and duties as corporations of a like character organized under the laws of this state, but that they are to have no other or greater powers.

I am of opinion that these statutory provisions are intended to put foreign corporations which have complied with the requirements of our law, upon the same footing as domestic corporations, and that they are entitled to protection against the assumption of names by domestic corporations which would fall within the prohibition hereinbefore referred to. To hold otherwise would defeat the manifest intent of the legislature in declaring that prohibition. I believe {*404} that having complied with the law, such a foreign corporation is, within the meaning of the statute, "an existing corporation of this state."

The State Corporation Commission must necessarily exercise some discretion in receiving or rejecting an offered certificate of incorporation, and my advice as to this particular matter is that you ought not to receive the proposed certificate unless compelled to do so by some judicial order. If the corporators deem it of sufficient importance to do so, they can institute a proceeding by way of mandamus to compel you to receive the certificate, and I will gladly cooperate with their representatives in getting the matter before the district court in the most expeditious and least expensive manner possible.

I return the correspondence and certificate which you sent with your letter.