

Opinion No. 16-1871

September 26, 1916

BY: FRANK W. CLANCY, Attorney General

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

Dissolution of a corporation.

OPINION

{*422} I have your letter of even date herewith, together with a petition presented to you by the New Mexico Loan and Trust Company, looking to its dissolution under the provisions of Section 919 of the Codification of 1915, and you ask whether or not the showing made is sufficient to warrant the Commission in issuing a certificate of dissolution under the provisions of the section mentioned.

The first question which presents itself to one's mind, is as to the provision in the last clause of the section, to the effect that when all stockholders consent in writing to a dissolution, no meeting or notice thereof shall be necessary, but on filing said consent in your office, the certificate of dissolution shall be forthwith issued. Without quoting the whole section, it is sufficient to say that two meetings are provided for therein, the first to be of the board of directors, of which three days' notice shall be given, at which meeting a majority of the whole board may adopt a resolution to the effect that the board deems it advisable, and for the benefit of the corporation, that it should be dissolved. After the adoption of such a resolution, notice thereof must be mailed to each stockholder and a like notice of a meeting of the stockholders must be published in a newspaper for at least four weeks successively. It has been suggested that the clause as to no meeting being necessary should be limited to the meeting of stockholders, and that the preliminary {*423} meeting of the directors ought to be held, but I see no reason for thus limiting the broad language "that no meeting shall be necessary." The general purpose of the section is to provide for a dissolution upon the consent of not less than two-thirds of the stockholders at a meeting, or of all of the stockholders without any meeting. If all of the stockholders consent, there can be no necessity for even the preliminary meeting of the board of directors. Action by the board of directors is not essential to the purpose of this section of the statute, which is to effect a dissolution by the consent of the stockholders. Therefore, I conclude that no meeting of any kind is necessary in cases where all of the stockholders consent to the dissolution.

If it appears from an examination that all of the consents in writing which are attached to the petition actually cover all of the stockholders as stated therein, it is my opinion that you will be justified in filing the papers and issuing the certificates of dissolution.

I return herewith the letter from Marron & Wood, the petition, the list of stockholders, and such consents of stockholders as are attached to the petition.