

Opinion No. 17-2063

October 25, 1917

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Hon. Hugh Williams, Chairman Corporation Commission, Santa Fe, New Mexico.

Provisions of Chapter 112, Laws of 1917, Requiring the Words "No Stockholders Liability" to Be Added to Corporate Name, Apply to Corporations Organized Before Passage of the Act.

OPINION

We have your favor of yesterday wherewith you hand us a file of correspondence between yourself and Mr. Francis C. Wilson, representing the Toltec Oil Company; and you ask our opinion concerning the issue involved. It appears from such correspondence that the Toltec Oil Company, which was incorporated August 21, 1916, and which, at the time of its incorporation, filed its certificate of no stockholders' liability, refuses to comply with the provisions of Section 24 of Chapter 112 of the Laws of 1917, on the ground that such enactment was passed after the incorporation of the company and cannot apply to such company retroactively. It is the contention of the company that the requirement of this section, namely, that the words "no stockholders' liability," must be added to the corporate name in every certificate, report, or record of the company required by law, and in every contract or corporate instrument, is an impairment of its charter and a burden which cannot be justified under the constitution.

It is of course a fundamental proposition that a corporate charter is a contract which may not be impaired or abrogated by legislative action. However the company in question was organized under the general corporation laws of this state. Our corporation laws, in Sections 887 and 888 of the Codification of 1915, provide specifically that the charter of any corporation, incorporated under the general laws, shall be subject to alteration by the legislature. These sections also provide that the legislature reserves the right to amend or repeal at its pleasure any provision of the general corporation laws. Since it was thus provided by the general laws in force when the charter was granted that all charters shall be subject to legislative control and alteration, these provisions, in legal effect become a part of the charter and, therefore, a part of the contract. It seems to us that the provisions of Section 24 of Chapter 112, are in no wise impairments of the charter of the complaining company. They are mere reasonable regulations, such as the legislature may rightfully impose, and they are in no wise an abridgment of the rights of the company, or a burdensome addition to its liabilities. The provision merely requires that the corporation, in certain important documents, give notice of its acceptance of the privilege of which it has heretofore availed itself. The section makes no material change in the rights and duties of the corporation, but only prescribes a reasonable regulation for the benefit both of the corporation and those with whom it may have dealings.

Even though Sections 887 and 888 were not contained in the general corporation laws of the State, I do not believe that any different rule would obtain. It is not questioned that all contract rights are subject to state regulations as all property is. Therefore, even though a company has a charter not subject to amendment or repeal by the legislature, it is nevertheless subject to changes that may be made in the general laws, so long as such changes are regulations in fact and not impairments under the guise of regulation. Any charter then, is to be deemed granted upon condition that the corporation shall be subject to such reasonable regulations as to the conduct of its business, as the legislature may prescribe, provided, they do not materially interfere with the enjoyment of its privileges and only serve to secure the ends for which it is organized.

It will be noted that the word "charter" has been used in this opinion in stating the principles applicable to this question. Strictly speaking the corporation in question has no charter or warrant granted by the State. But corporations which are organized under the general law, acquire corporate existence and corporate privileges which are in effect charter rights and such rights and privileges are protected and regarded as a charter would be protected and regarded.

It is therefore our opinion that Section 24 of Chapter 112 of the Laws of 1917 is applicable to the company in question and to all other corporations in like situation.