

Opinion No. 19-2454

December 20, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

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

Filing of Annual Reports by Railroads.

OPINION

We have your letter of the 19th instant, enclosing one from Mr. W. A. Hawkins, General Counsel of the El Paso & Southwestern System, in regard to the necessity of the filing of annual reports required by section 932, Code 1915. by railroad companies.

After a thorough examination into and careful consideration of the matters mentioned in Mr. Hawkins' letter, we have come to the conclusion that it was not the intention that either domestic or foreign railroad companies should be required to file the annual reports designated in the above named section, and our conclusion is based upon the fact that an annual report for railroads is provided for in section 4695, Code 1915, and we believe that this latter named section is exclusive upon this particular subject.

In addition to the report required by section 4695, railroad companies are required to furnish detailed information to the Interstate Commerce Commission in the annual reports to that body, copies of which are filed with the State Corporation Commission, and these reports contain all the information that is prescribed by section 932. This view is further supported by the fact that section 1016, Code 1915, provides that the general incorporation act shall not apply to railroad companies except so far as the same is "expressly applicable" to such corporations, and the words "expressly applicable" have been defined to mean "specifically named." We do not find railroad companies named as such in the provisions of section 932, and this, together with the reasons above given, leads us to the conclusion that railroad companies shall not be required to file the annual report required from general corporations.

That this applies as well to foreign as to domestic corporations is apparent from a reading of section 985, wherein it is provided that "foreign corporations, including railroad and telegraph corporations, having complied 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."

Thus it will be seen that a foreign railroad corporation is subject to the same rule in regard to the filing of reports as are domestic railroad corporations.

In reply to your inquiry as to the necessity for a railroad corporation to designate a statutory agent for the purposes of service of process, we would call your attention to

the fact that the annual report prescribed in section 4695 does not require the company to name such an agent, and as the provisions of section 932, as amended by Chapter 112, Laws 1917, do not apply to railroad companies, then a statutory agent need not be named in the certificate of incorporation.

The requirement that the statutory agent should be named in all certificates filed with the Corporation Commission also does not apply to railroad corporations, for the railroad companies are not specifically named in the sections providing that this should be done.

Aside from the reasons above given for the holding that statutory agents need not be named by railroad companies, we would call your attention to the fact that every agent of a railroad company is a person named by statute upon whom service can be had, and therefore the necessity for the designation of a statutory agent for that purpose is not necessary. Should we conclude that it be necessary to designate a statutory agent by railroad companies upon whom process can be made, and should such service be had upon such an agent, and the courts subsequently rule that there is no authority requiring such a designation, then the service upon the company would be null and void and without effect, and in that manner rights of action against such companies might be barred before service could be had upon the regular designated agent of the company, and with the result that persons might be deprived of their rights of action against such companies. We can conceive of no harm resulting by reason of the holding that no statutory agent for service need be named by railroad companies, but much harm might result from a contrary holding by this office with the possibility of our courts taking the opposite view and afterwards holding that service upon such an agent was without authority of law.

We are returning to you herewith Mr. Hawkins' letter of the 16th, enclosed with yours to which this is a reply.