

Opinion No. 23-3663

January 22, 1923

BY: MILTON J. HELMICK, Attorney General

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

The State Corporation Commission May Exclude a Foreign Corporation Whose Name Is Too Similar, In Its Opinion, to That of Another Corporation Already Domiciled in New Mexico.

OPINION

{*8} A corporation called Chino Extension Mining Company recently incorporated under the laws of the State of Delaware, has applied to the State Corporation Commission for a certificate authorizing {*9} it to do business in New Mexico, with its principal office at Silver City, Grant County. In the judgment of the State Corporation Commission the name of this Delaware corporation is so nearly similar to that of the Chino Copper Company as to lead to uncertainty and confusion. The Chino Copper Company is incorporated under the laws of Maine and has been domiciled in New Mexico, with its principal office in Grant County, for many years. The State Corporation Commission in the exercise of its judgment feels that the new Delaware Company should not be admitted under the name which it has assumed, but it is contended on behalf of the Delaware Company that since it is a foreign corporation, the said Corporation Commission has no power to exclude it on its compliance with the statutes on foreign corporations and the payment of the usual fees.

This inquiry arises upon the question whether the State Corporation Commission has power to exclude a foreign corporation because its name is too similar to that of another foreign corporation domiciled in the state.

Section 985 of the code of 1915 provides that foreign corporations doing business in this state shall be subject to the provisions of the general corporation statutes of the state so far as the same can be applied, and that they shall be subject to all liabilities and duties as corporations of a like character organized under the laws of the state, but that they shall have no other or greater powers. Section 891, as amended by Chapter 112 of the laws of 1917, refers to the incorporation of domestic companies in this state and, among other things, says:

"No name shall be assumed already in use by another existing corporation of this state; or which, in the judgment of the State Corporation Commission, is so nearly similar thereto as to lead to uncertainty or confusion."

In an opinion of former Attorney General Frank W. Clancy, on July 3, 1916, it was held that a foreign corporation domiciled and doing business in this state is an "existing

corporation of this state" and, under the above quoted section, is entitled to protection against the assumption of a similar name by a domestic corporation. I think this opinion is sound and, so far as I know, has never been questioned. In fact, it has been followed by the State Corporation Commission in several instances.

But it is contended that the prohibition of the assumption of similar names, and the opinion of former Attorney General Clancy, apply only to domestic corporations and that the statute cannot be invoked in excluding the entrance of a foreign corporation complying with the law.

Under principles of comity a corporation created by any state or nation is permitted to enter any other state and there to exercise all legitimate power conferred upon it, and carry on any business not prohibited by local laws, or against the local public policy. However, a foreign corporation will not be recognized as a corporation, or its acts upheld in the exercise of comity, when to do so would be contrary to local laws or policy, or prejudicial to local interests, and the rule is generally expressed with this limitation. The rule of comity does not go to the extent of placing foreign corporations on more favorable ground than domestic corporations in the transaction of business within the state.

{*10} These principles are applied by the Supreme Court of Washington, in the case of State vs. Nichols, 51 Washington 619, 99 Pac. 876. The facts in this case are almost identical with the situation on which this inquiry arose. The statute of the state of Washington prohibiting the assumption of similar names of existing corporations like section 891 cited is in its terms, addressed to domestic corporations, but the Supreme Court of Washington held, in a well reasoned opinion, that a foreign corporation cannot do that which it is unlawful for the domestic corporation to do, and that the Secretary of State of Washington was justified in refusing to allow the foreign corporation, with a name similar to that of an existing Washington corporation, to enter the state. There can be no doubt that in New Mexico, as in Washington, every restriction put upon a domestic corporation likewise applies to a foreign corporation doing, or seeking to do, business in the state.

I find that the case of the State vs. Nichols has been approved and followed several times -- once by the Supreme Court of Illinois, and once by the United States Circuit Court of Appeals of the Ninth Circuit.

The State Corporation Commission in the exercise of its judgment, has determined that the name "Chino Extension Mining Company," assumed by the new Delaware Company is so similar to the name of the "Chino Copper Company" doing business in the same county in which the new company desires to operate, as to lead to uncertainty and confusion, and since the State Corporation Commission has so determined, it is my opinion that the Commission must refuse to allow the Delaware corporation to enter the state.