

Opinion No. 23-3739

November 7, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Hon. James F. Hinkle, Governor of the State of New Mexico, Santa Fe, New Mexico.

The Wholesale Cancellation of County Treasurers' Bonds by the National Surety Company for Insufficient and Flimsy Reasons Subjects Such Company to Expulsion from the State.

A Representative of this Company Who Entered New Mexico and Deliberately Spread Disquieting Rumors Concerning the Solvency of a Number of Banks Committed a Criminal Offense.

OPINION

{*101} The Governor of the State of New Mexico asks for an opinion as to whether the National Surety Company's right to carry on business in this state may be terminated because of the matters hereinafter recited.

It appears this morning that the National Surety Company has cancelled the bonds of the County Treasurers of a number of counties -- the full number not yet having been ascertained. The notices of cancellation are in the form of a two-page mimeographed form-letter mailed from Denver and signed by Ralph W. Smith as Vice-President. This notice is accompanied by another form-letter signed by the same person in which he assures the recipient that the cancellation is not made on personal grounds but because of the matters contained in the main letter. The main letter recites that the cancellation is made because of the opinion of this office to the State Treasurer dated October 12, 1923.

The opinion referred to simply held that where banks give several forms of security to cover the deposits of state monies, the state, in case of loss, may make good out of any one or all of the various securities furnished and is not obligated to pro rate the loss among the various securities and is not concerned with the question of contribution between them.

The mimeographed form-letter gives a most amazing version of what the writer thinks the opinion held. The second paragraph of the letter starts in this fashion: "In other words this opinion followed to its logical conclusion means this," and thereafter follows a page and a half of speculation on the part of the writer as to what the "logical conclusion" is. These conclusions are not contained in the opinion of this office and were not dreamed of by me or anyone else. In other words, the objections of the writer

of the form-letter are based on things which are not in the opinion but which he thinks might be the "logical conclusion" of the opinion.

The opinion of this office could not possibly have any application to the cases of County Treasurers because none of such Treasurers have more than one form of bond.

If my opinion is not the law, this surety company is not harmed thereby, and if it is the law it furnishes no just ground for resentment on the part of the company. The mimeographed form-letter appears to attribute a flattering finality to an attorney general's opinion which I was not aware existed.

{*102} The letter may have been composed by Mr. Smith, who signed it, because it is obvious that it was not composed by any member of the Legal Department of the National Surety Company. The Legal Department of the National Surety Company will not assert that my opinion was wrong.

The Governor has also stated to me that a representative of this company came to Santa Fe some weeks ago and deliberately spread disquieting rumors concerning the solvency of a number of banks in this state. The talk of this agent was heard by many people in Santa Fe.

This inquiry is made by the Governor as to whether the foregoing acts of the National Surety Company are sufficient in law to justify the authorities of this state in terminating the right of this company to do business in the State of New Mexico. It may be the intention of this company to withdraw voluntarily from this state. If this is the case and the mimeographed letter, and the acts of the agent, who visited Santa Fe, authoritatively represent the sentiments of the company, the Governor and the other officials will doubtless be delighted to expedite its purpose to withdraw; but in case such a voluntary withdrawal is not contemplated, it becomes necessary to answer the inquiry. The sudden wholesale cancellation of County Treasurer's bonds, by means of this inexcusable mimeographed form-letter, coupled with the unlawful talk of its agent, unquestionably demonstrate deliberate purpose on the part of the company to harm and embarrass the State of New Mexico, its officers, its public finances and its citizens. Whether the course pursued by the National Surety Company is part of a conspiracy will probably be disclosed when the various treasurers apply to other surety companies for new bonds. At the present time there are no indications that any other surety company intends any harm.

The general rule asserted by the Supreme Court of the United States is as follows: The state may admit or exclude a foreign corporation at its pleasure, and after having given it a license to do business in the state the state may revoke the license, in its discretion, for good cause or without any cause at all, and the state's motive in doing so is not open to inquiry, subject, of course, to the constitutional requirements with respect to the obligation of contracts, vested rights and the like. There are a great many cases involving this principle. Usually, licenses of foreign corporations have been forfeited because of non-compliance with some statutory requirement or because of violation of

some criminal law of the state, and it has been held that it is not necessary to the exclusion of a corporation for the violation of criminal laws that there should have been a previous conviction in the courts of law. The statements of the agent and the circumstance under which they were made, in my opinion, constitute an offense under the terms of Chap. 75 of the laws of 1923. I do not think it necessary for me, in this opinion, to do more than state the general rule regarding the right of the state to expel foreign corporations for cause. It is likewise unnecessary to discuss the machinery and method by which the expulsion is to be accomplished. It is sufficient, I think, to say in my opinion the National Surety Company may rightfully be expelled for what it has done in case the authorities so desire.