

**Opinion No. [30-102]**

February 18, 1930

**TO:** Office of the Attorney General of New Mexico

STATE CORPORATION COMMISSION -- To determine effect of similarity of names. § 32-108, Code 1929.

**OPINION**

I have yours of the 17th inst. in which you ask for an opinion regarding the position taken by the commission on the application of Paramount Life Company, a foreign corporation, for a certificate to do business in New Mexico and with which you also loaned your file pertaining to that matter.

I have carefully examined this application and the correspondence attached thereto and I note that you, on the 11th day of January, 1930, advised Mr. Addison B. Manning of the Paramount Life Company that you cannot accept these articles for filing under the name "Paramount Life Company" as in the opinion of the commission the word life makes the name so similar to insurance companies on file in our insurance department that it would lead to confusion, thereby creating an injustice to the large insurance companies who are authorized to do business in this state.

Article II, section 6 of the Constitution of the State of New Mexico is in part as follows:

"Sec. 6. Subject to the provisions of this constitution and of such requirements, rules, and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters for domestic corporations and amendments or extensions thereof and all licenses to foreign corporations to do business in this state; and through which shall be carried out all the provisions of this constitution relating to corporations and the laws made in pursuance thereof. . . ."

Subsection 1 of section 32-108, Compilation of 1929, which is an amendment of section 891 of the Codification of 1915, as the same was amended by section 1 of chapter 112 of the Laws of 1927, is as follows:

"The name of the corporation, which name shall contain one of the words 'corporation,' 'incorporated,' 'company,' 'association,' 'club,' 'society,' 'union,' or 'syndicate,' or one of the abbreviations 'Co.' or 'Inc. '; 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 be misleading or confusing."

Section 32-203, Compilation 1929 (paragraph 101, chapter 79, Laws of 1905) contains the following:

"Foreign corporations doing business in this state shall be subject to the provisions of this article so far as the same can be applied to foreign corporations."

Section 32-206 requires foreign corporations to file a copy of charter, statement, etc., before commencing business and ends with this language:

"Upon the filing of such copy and statement the State Corporation Commission shall issue to such corporation a certificate authorizing it to transact business in this state and that the business is such as may be lawfully transacted by corporations of this state and said commission shall keep a record of all such certificates issued."

It has been contended that the requirements as to what the certificate shall contain as set forth in section 32-108, Compilation 1929, supra, has no reference to foreign corporations and that even if it should have reference to foreign corporations that there is nothing in the name Paramount Life Company which could confuse it with the names of insurance companies doing business in this State. True, the primary application of the requirements as to the contents of the certificate is to corporations being incorporated in this state. However, we are of the opinion that the section next quoted, 32-203, which makes foreign corporations subject to the provisions of this article, so far as the same can be applied to foreign corporations, has the effect of making this requirement apply as well to foreign corporations seeking to qualify to do business in this state.

As to the argument concerning the wording of the title, this, I take it, is a matter wholly within the judgment of the State Corporation Commission. You will note that no name shall be assumed which, in the **judgment of the State Corporation Commission**, is so nearly similar to a name already in use by another existing corporation of this state as to be misleading or confusing and your commission has already given it as your judgment that the name Paramount Life Company would, in your judgment, lead to confusion. If the State Corporation Commission is left without any discretion in this matter then there is nothing to prevent the forming of a corporation in another state and giving thereto the identical name of some existing corporation in this state then bringing the newly formed corporation into New Mexico simply by filing the articles and statement called for in section 32-203, Compilation of 1929, upon which filing and payment of fees the State Corporation Commission would be compelled to recognize and issue certificate to such foreign corporation permitting it to enter a developed field here in competition with the already existing corporation in New Mexico, the result being that the general public could and would be misled in transactions with such corporation.

We note further that the prohibition against the use of a **name** already in use by an existing corporation in this state and which is so similar thereto as to, in the judgment of the State Corporation Commission, cause confusion and not the **purposes** of the corporation, is the real test.

From what precedes you will note that it is the opinion of this office that your commission is right in assuming to determine whether or not the name Paramount Life Company is so nearly similar to the name or names of existing companies in this state as to cause confusion and you are right under your finding in refusing to accept for filing the articles submitted under that name.