

Opinion No. 31-123

April 14, 1931

BY: Frank H. Patton, Assistant Attorney General

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

{*62} Your letter of April 11th calls for advice upon your attitude regarding the change of name of the Old Line Life Insurance Company of New Mexico, and you desire to know what action the Commission should take toward compelling the company to make such change in its name. You have referred the entire file to this office and same has been carefully examined and considered.

We find that said corporation is a domestic corporation, having been incorporated under the laws of New Mexico in February of 1929. You state in your letter of transmittal that had the commission had an opportunity to pass upon the matter it would not have admitted the company with the name as it appears in its charter.

Under the law, which is set forth in Section 32-110 of the 1929 Compilation, it seems that no formal action is necessary to be taken by the commission in so far as regards the admission or the incorporation of a company. Under this section, upon the making of the Certificate of Corporation and causing the same to be filed and a certified copy thereof recorded and paying the required filing fees, the persons so associating shall from the time of such filing in the office of the State Corporation Commission be and constitute a body corporate by the name set forth in said certificate.

Upon compliance with the provisions of the statute a proposed corporation automatically begins its corporate existence, and, as above stated, formal action is not necessary by the commission and no resolutions to such effect are contemplated in any of our statutory or constitutional provisions.

Therefore, this company became a corporation when it complied with its statutory provisions with reference to its incorporation, and there was no occasion for your commission to pass upon the matter; so long as this company complied with the requirements of law you would have no discretion in the matter and upon a refusal by the commission to admit a corporation, it would be liable in a mandamus proceeding.

The charter of this corporation constitutes a contract, and inasmuch as the State has entered into and approved this contract as of March, 1929, it is seriously doubted if you have any authority to require a change in its name at this time.

Section 32-108 of the 1929 Compilation sets forth the matter to be included in the certificate of incorporation and states that 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.

This, of course, contemplates a case where the proposed certificate of incorporation is submitted to the State Corporation Commission for filing. If, in the opinion of the State Corporation Commission and its discretion, the name of the proposed corporation is so nearly similar to an existing corporation in this State or if it is misleading or confusing, then the commission would have the right to refuse to file the certificate of incorporation until a change had been made in the name.

In this instance this corporation has been permitted to incorporate under the New Mexico Laws with its present name; it has operated and been in existence under this name for more than two years; it is purely and simply a holding company and it is the opinion of this office that you have no legal authority to attempt, at this time, to require any change in this name.

The name of this company is a part of its assets and to require any change at this time would simply amount to a violation of the state's obligation of contract.

We have studied the opinion of Mr. J. A. Miller, Assistant Attorney General, in regard to the Paramount Life Company, and which was rendered on February 18, 1930. The facts in that case appear to be radically different from the matter under consideration inasmuch as in that case the corporation commission acted before accepting for filing the requisite papers of the company. We make no attempt to pass {*63} upon the correctness of said opinion and in view of what we have said above it is not necessary to do so.

We are returning herewith your copy of the said opinion, together with the remainder of the file regarding the Old Line Life Company of New Mexico.