

Opinion No. 34-773

June 14, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Don R. Casados, Chairman State Corporation Commission, Santa Fe, New Mexico.

{*136} Your letter of June 12th encloses copy of letter from Cooney Mining Company at Silver City, wherein information is requested in regard to qualifications of directors of a proposed new corporation to be formed under the general incorporation laws of this state.

This corporation is to be known as the Victorio Mining Company, provided such name is available for use at this time. That, of course, is a question which must be determined from the records in your office and is not a legal question.

The Company specifically desires to know if it is necessary that the directors be stockholders, and we have given consideration to the statutes in this connection and find the following facts: In the first place, Section 32-145 of the 1929 Compilation provides that no person shall be qualified to serve as director of any corporation issuing stock unless he shall be holder of some of the stock thereof. This was originally Section 44 in Chapter 79, Laws of 1905. In the same Chapter, 79, in Section 11, we find it provides that the business of every corporation shall be managed by its directors who shall respectively be shareholders therein.

In 1927 the Legislature amended this section by inserting the words: "unless otherwise provided in its charter."

Section 32-153 is also a part of the 1927 law which is Chapter 112, and in this provision we find the following: "unless otherwise provided {*137} in the certificate or the articles of incorporation or an amendment thereof it shall not be necessary for directors to be stockholders."

You can see, therefore, from the foregoing that in one place the statute requires that directors of corporations who issue stock must be stockholders, in another place it is required that such directors shall be stockholders unless otherwise provided in the charter, whereas, in another place we find that it is not necessary for directors to be stockholders unless provided otherwise in the charter.

This language is very confusing, and it is difficult to determine just what the intention of the Legislature was in such a case.

However, it is our opinion that if the corporation provides in its charter a provision to the effect that directors need not be stockholders, that there will be a sufficient adherence to

the requirements, and we believe this corporation would be perfectly safe in inserting such provision in its charter or its articles of incorporation.

By: FRANK H. PATTON,

Asst. Attorney General