

Opinion No. 34-811

October 3, 1934

BY: E. K. NEUMANN, Attorney General

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

{*156} We have your letter of October 2, 1934, enclosing letter from the Cooney Mining Company. This company wishes to know whether or not Sections 32-135 and 32-156 of the 1929 Code will interfere with the issuance by it of stock dividends out of increased values of its properties.

In this connection I refer you to Section 5265 of Vol. 7, Thompson on Corporations (3d Ed.), which reads, in part, as follows:

"Stock dividends are not infrequently and legitimately made where the proceeds have been used in improvements of the corporate property or in the extension of its business. Another and a frequent and proper instance of such dividends is where the corporate property by improvements or otherwise has greatly increased in value and has become worth more than the original capitalization and the additional stock is issued to represent the difference between the original capital and the increased value of the corporate property."

A statute similar to ours was construed in the case of *Williams v. Western Union Telegraph Co.*, 93 N. Y. 162, and was held not to prohibit the issuance of a stock dividend. The New York court, however, made this remark:

"It may be that a distribution of stock gratuitously to the stockholders of a company based upon no value, a mere inflation, or, to use a phrase much in vogue, a watering of stock, would be condemned by the law."

From the foregoing, as well as the discussion of stock dividends in *Booth v. Gross-Kelly & Co.*, 30 N.M. 465, it is my opinion that a corporation, incorporated under the laws of this state, which has authority under {*157} its charter to increase its capital stock, may issue stock dividends when such dividends are based upon actual values, represented by improvements and additions to its original capital. Such dividends should not be made when to do so would impair the original capital of the company or would result in a mere "watering of stock."

By: QUINCY D. ADAMS,

Asst. Attorney General