

Opinion No. 54-5961

May 28, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. P. A. Quintana Assistant Clerk Corporation Department State Corporation
Commission Santa Fe, New Mexico

{*418} On March 17, 1954, you requested an opinion from this office involving {*419} two problems. First, whether or not you are authorized to charge a fee on the par value shares of authorized capital stock, and also on the shares of authorized capital stock without par value, of a foreign corporation, as provided in case of domestic corporations, in accordance with § 54-1109, N.M.S.A., 1941 Comp.

Your attention is directed to subsections (4) and (5) of § 54-1001, N.M.S.A., 1941 Comp., which are pertinent to your two problems and which read as follows:

"(4) Every foreign corporation, when it obtains from the state corporation commission a certificate of authority to do business in this state, shall pay the following fees, to be ascertained and fixed as follows:

"For a corporation whose maximum authorized capital stock is two hundred and fifty thousand dollars (\$ 250,000) or less, twenty-five dollars (\$ 25.00); for a corporation whose capital stock is over two hundred and fifty thousand dollars (\$ 250,000), and not to exceed five million dollars (\$ 5,000,000), ten cent (10 [cents]) for each thousand dollars \$ 1,000), but in no case shall such fee or tax exceed the sum of two hundred and fifty dollars (\$ 250); over five million dollars (\$ 5,000,000) and not to exceed ten million dollars (\$ 10,000,000), five hundred dollars (\$ 500); over ten million dollars (\$ 10,000,000) and not to exceed twenty million dollars (\$ 20,000,000), seven hundred and fifty dollars (\$ 750); over twenty million dollars \$ (20,000,000), and not to exceed thirty million dollars (\$ 30,000,000), one thousand dollars (\$ 1,000); over thirty million dollars (\$ 30,000,000), and not to exceed seventy-five million dollars (\$ 75,000,000), one thousand five hundred dollars (\$ 1,500); over seventy-five million dollars (\$ 75,000,000), and not to exceed one hundred million dollars (\$ 100,000,000), two thousand dollars (\$ 2,000); over one hundred million dollars (\$ 100,000,000), three thousand dollars (\$ 3,000): Provided, however, that foreign corporations without capital stock, or with capital stock having no fixed par value, shall pay fifty dollars (\$ 50.00) only for such certificate of authority to do business "(5) Increase of capital stock of foreign corporations, the same fees for the amount of the total increase as above specified for original admission to do business in this state; Provided, however, that in no event shall the fees for any or all increases of capital stock of foreign corporations, exceed the sum of three thousand dollars (\$,3000)."

There is no provision to be found in § 54-1001, N.M.S.A., 1941 Comp., or in any other statute that I have been able to find, authorizing the Corporation Commission to charge

a foreign corporation two fees, one on no par value stock, and another one on par value stock.

Sub-section (4) of § 54-1001 specifically provides that a foreign corporation, when it obtains from the Corporation Commission a certificate of authority to do business in this State, should pay the following fees: A corporation whose capital stock is \$ 250,000 or less pays \$ 25.00, and the amount of the fee increases until a limit of \$ 3,000 is reached on a corporation having a million dollars or more of capital stock.

The above fees are for foreign corporations having par value stock.

At the bottom of sub-section (4) of § 54-1001, N.M.S.A., 1941 Comp., {**420*} is found a proviso which specifically sets a minimum fee of \$ 50.00 on a foreign corporation without capital stock, or with capital stock having no fixed par value.

Under Volume 82 of CJS, page 666, is found the following under heading of "Statutes":

"Generally, the maxim, *Expressio unius est exclusio alterius*, is applicable in the construction and interpretation of statutes, when the intention of the law-making body is not otherwise clear. Accordingly, where a statute enumerates the subjects or things on which it is to operate, or the person affected, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned; and, where it directs the performance of certain things by specified means or in a particular manner, or by a particular person or class of persons, it implies that it shall not be done otherwise or by a different person or class of persons."

Our Supreme Court, in the case of **Fancher et al v. County Com.**, 28 N.M. 179, on rehearing and in affirming the judgment of the District Court in the case in which the above mentioned doctrine, was used, said:

"The doctrine is otherwise stated in 2 Lewis, Sutherland's Stat. Const. p. 919, as follows:

"Where authority is given to do a particular thing and the mode of doing it is prescribed, it is limited to be done in that mode; all other modes are excluded. This is a part of the so-called doctrine of *expressio unius est exclusio alterius*."

In view of the above authorities, it is the opinion of this office that in a case where a foreign corporation has both no par value stock and par value stock, the Corporation Commission cannot charge two fees, but should determine what computation brings a larger fee to the Corporation Commission, whether the computation based on par value as per subsection (4) of § 54-1001, or the computation based on no par value stock, as provided by the same sub-section. After determining which is the larger fee, the Corporation Commission should waive the smaller fee and charge the larger fee.

Your second question in the case of an agreement or merger, is the Corporation Commission authorized to charge a fee for filing an agreement or merger computed on the basis of the present authorized capital stock of the surviving corporation after the effect of the merger, or is the Commission authorized to charge the same fees for the amount of the total increase, if any, as specified for original admission to do business in this State, as is provided in § 54-1001, N.M.S.A., 1941 Comp.

I call your attention to sub-section (5) of § 54-1001, N.M.S.A., 1941 Comp., which is pertinent to this problem and which reads as follows:

"(5) Increase of capital stock of foreign corporations, the same fees for the amount of the total increase as above specified for original admission to do business in this state; Provided, however, that in no event shall the fees for any or all increases of capital stock of foreign corporations, exceed the sum of three thousand dollars (\$ 3,000)."

The above quoted sub-section specifically provides that for increase of capital stock of foreign corporations, the same fees for the amount of the total increase as above specified for original admission to do business in this State; with a proviso that in no {*421} event shall the fees for any or all increases of capital stock of foreign corporations exceed the sum of \$ 3,000.00.

It is the opinion of this office that for increases of capital stock of foreign corporations the same fees for the amount of the total increase as specified in sub-section (4) for original admission to do business in this State shall be charged; provided that in no event shall the fees for any or all increases of capital stock of foreign corporations exceed the sum of \$ 3,000.00.

Trusting that this fully answers your inquiries, I remain

By: Hilario Rubio

Assist. Attorney General