

## Opinion No. 55-6119

February 28, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. John Block, Jr., Chairman, State Corporation Commission, Santa Fe, New Mexico

Re: Request of P. A. Quintana, Assistant Chief Clerk

### OPINION

You have requested this office to clarify Section 51-12-1, N.M.S.A., 1953, for you relative to subsection (5) thereof, which section deals with the filing fee chargeable a corporation upon the filing of a certificate of amendment of its certificate of incorporation increasing the total authorized capital stock. Subsection (5) of Section 51-12-1, N.M.S.A., 1953, 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 wording that is obviously giving you trouble is contained in the proviso of this subsection. In your request you indicate that you would interpret the above underlined words "any or all" to read "any and all." Therefore, you would charge a foreign corporation for each and every increase the same amount as you charge for original incorporation on the differential between the original authorized capitalization and the capitalization established by the increase without any limit upon the total amount collected over the life of the corporation.

To determine if your interpretation is correct, it is necessary to arrive at the legislative intent expressed in this section of our statutes.

It is first noted that the Legislature provided a different fee for foreign corporations as opposed to domestic. With domestic corporations there is no mention of a maximum limit on the amount to be charged for any or all increases in capital stock. Next, there is a detailed itemized scale to be applied to foreign corporations upon the filing of the original request for authority to do business in this State. (Subsection 4) Here it can be seen that the maximum amount that can be charged is \$ 3,000 for a foreign corporation having a capitalization of over one hundred million dollars (\$ 100,000,000).

Since the maximum that can be charged upon original application to do business in this State is \$ 3,000, it does not seem logical that the Legislature would add a proviso to subsection (5) to again remind the Corporation Commission that for each increase \$

3,000 is the limit. This would be merely surplusage. Applying the usual accepted statutory construction to the words "any **or** all", we are constrained to say that where the disjunctive conjunction "or" is used, the various members of the sentence are to be taken separately. (See 50 Am. Jur., page 267, Section 281).

Considering these factors, it is our interpretation that the proviso contained in subsection (5) of the subject section of our statute means that the total amount that can be collected from a corporation for **all** of its certificates of amendment to its articles of incorporation increasing its capital stock is \$ 3,000. Should you feel this is not equitable in some manner or means, it is, of course, a matter that should be taken before the Legislature.

We also enclose a copy of Attorney General's Opinion No. 1847, dated December 27, 1937, which holds to the same effect as this opinion and with which we concur.

By: J. A. Smith

Assistant Attorney General