

Opinion No. 68-108

October 29, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Angeline Stanley, Clerk Curry County County Courthouse Clovis, New Mexico

QUESTION

QUESTION

In compliance with the laws of the State of New Mexico, is it necessary for the County Clerk of the county in question to accept for recordation articles of incorporation of corporations organized under the laws of this State where said corporations are organized under the Business Corporation Act [Sections 51-24-1, et seq., N.M.S.A., 1953 Comp. (P.S.)] or any other provisions for corporate entities?

CONCLUSION

No.

OPINION

{*175} ANALYSIS

Prior to 1967, the general incorporation laws of the State of New Mexico were found in § 51-2-1, et seq., N.M.S.A., 1953 Comp. Under this previous act, articles of incorporation (called certificates of incorporation) were filed in the office of the State Corporation Commission and a copy recorded in the proper books with the county clerk of the county where the corporation had its principal office within the State, § 51-2-9, supra. Any amendments to a certificate of incorporation likewise were filed with the State Corporation Commission and a copy thereof recorded with the county clerk, Sections 51-2-19, 51-2-20 and 51-2-25, supra.

In 1967, our Legislature adopted the Business Corporation Act, Ch. 81, Laws 1967 [compiled as Sections 51-24-1 through 51-31-11, N.M.S.A., 1953 Comp. (P.S.)]. This law repealed all of the above cited provisions applicable to articles of incorporation and became the general corporation law of the State; therefore, we must review that act to ascertain the method of filing articles of incorporation and amendments thereto.

Section 51 [§ 51-25-3, supra] provides that duplicate originals of the articles of incorporation shall be delivered to the State Corporation Commission. If the Corporation Commission finds that the articles of incorporation conform to the law, then it will issue a certificate of incorporation and return it to the incorporators of the corporation. No requirement exists in this provision for filing or recording articles of incorporation with

the county clerks. Similarly, articles of amendment of the corporation's articles of incorporation are submitted in duplicate to the State Corporation Commission and if such articles are in conformance with the law, the Commission then issues a certificate of amendment returning same to the corporation, Section 59, supra [§ 51-26-5, supra]. Again, no requirement exists in this provision for filing the amendments with the county clerks. Amendments to the articles of incorporation of those corporations formed under preexisting law are to be filed pursuant to the Business Corporation Act. See § 51-12-10, N.M.S.A., 1953 Comp. (P.S.).

We must necessarily conclude, therefore, that under the present laws applicable to corporations, it is not necessary that county clerks accept articles of incorporation or amendments thereto for recordation in the county clerk's office. Such recordation is not required under existing statutes and would serve no legal purpose. The State Corporation Commission is the Agency responsible for administering the corporation laws of New Mexico.

By: David R. Sierra

Assistant Attorney General