

## Opinion No. 12-939

August 26, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** State Corporation Commission, Santa Fe, N. M.

### **EXPRESS COMPANY.**

State cannot exact from Globe Express Company the payment of \$ 500.00 for filing certificate of extension of corporate existence.

### **OPINION**

{\*91} Your letter of the 21st instant was duly received, together with letters from Mr. E. N. Clark, General Attorney for the Denver & Rio Grande Railroad System, dated August 7th and August 15th respectively, with relation to the matter of the extension of the corporate life of the Globe Express Company. I examined and read with care Mr. Clark's letters and found much in them which seemed to require careful consideration, but I was unable to give the necessary time to that consideration until yesterday, when upon the principal point for discussion I found in the state library a case in volume 216 of the Reports of the Supreme Court of the United States which appeared to me to settle the matter adversely to the opinion which I have heretofore expressed. Just after I had found this case your chairman handed me another letter from Mr. Clark of August 23rd, briefly calling attention to the same case.

There were three matters dealt with in Mr. Clark's letter of August 15th, the first and second of which appear to be of no practical importance, as Mr. Clark expressed his willingness as to the first one to do what Secretary Jaffa asked, and as to the second one he said that he had already done what Mr. Jaffa asked. The third one was as to the payment of a fee of five hundred dollars upon the filing of certificate of extension of corporate existence in accordance with the requirements of the corporation law of 1905, as set out in Section 119 of that act, and it is upon that point that I find the Supreme Court of the United States, has in the case above referred to and in another immediately following it, held against the view which I have heretofore taken. I believe that full answered could be made to the other portions of the argument of Mr. Clark, but I found his suggestion that the imposition of such a payment would be an interference with interstate commerce, very disturbing, and this was a matter, as Mr. Clark himself said, that had not been previously considered or passed upon by me.

The two cases are Western Union Telegraph Co. vs. Kansas, 216 U. S. 1, and Pullman Co. vs. Kansas, at page 56 of the same volume. There is no way to distinguish these cases from the matter now under consideration. A statute of Kansas required of foreign corporations as a condition of their being allowed to do business in the state, a payment of a certain percentage of their authorized capital, and sought to exclude foreign

corporations from doing business because of the non-payment of this fee. It will be seen that this is almost an exact parallel of the requirement in our statute, and the Supreme Court decided in favor of the corporations, with three members of the court dissenting; and there is also a statement at the end of the Telegraph Co. case that Mr. Justice Peckham, who was then dead, had taken part in the consideration of the case, and agreed with the minority. The opinion of the majority, however, settles the question definitely and contains the decision of the court, from which no appeal can lie as to questions of this class.

I am therefore compelled to advise you that the State of New Mexico cannot exact from the Globe Express Company, which is engaged in interstate business, the payment of five hundred dollars heretofore asked.

I return Mr. Clark's letters herewith.