

Opinion No. 13-1065

June 19, 1913

BY: FRANK W. CLANCY, Attorney General

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

CERTIFICATES OF INCORPORATION.

Publication of amendment of certificate of incorporation should be made.

OPINION

{*235} I have received your letter of even date herewith relative to an amendment to the certificate of incorporation of El Capitan Livestock Company, which was presented on June 4, 1913. You say that that instrument contains matters not required by law to be set out therein, but as it had all that was required it was accepted and made of record.

You further say that now another document setting forth the same amendment, with the extraneous matters eliminated, is presented for filing.

I have seen the paper which was filed on June 4, as Mr. Hudspeth showed it to me yesterday afternoon, and I suggested him the making of a certificate in proper form, omitting those things not required by the statute and its presentation as in the nature of a substitute or addition to the paper first filed. I understood from him that it was desired to publish only the actual amendment as required by the statute and he thought that you could certify for publication a part of the paper which was filed on June 4. I thought that while this might be done there were some practical difficulties about the preparation of satisfactory extracts and that the other course would be a better one. As the amendment set out in the later paper is the same, as you say, there could be no good reason for publishing anything more than this last certificate.

I do not see how it can be considered as setting out a second amendment as it certifies the same identical amendment contained in the first paper.

I do not see how it can be held that the first paper became, in its entirety, an integral part of the original articles, because it contained matters which would not have been permissible in the original certificate of incorporation, and you might have properly refused to file it for that reason on account of the prohibition contained in the proviso to Section 30 of the general corporation act of 1905.

I am of opinion that you might treat this last paper as a substitute for the first one, or you might, in literal compliance with the language of Section 135, make for publication a certified copy of the amendment of the certificate of incorporation which is set out in the

certificate first filed. The extraneous matters contained in that paper certainly ought not to be published.