

Opinion No. 16-1814

June 5, 1916

BY: FRANK W. CLANCY, Attorney General

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

Copy of minutes of meeting for the organization of a corporation cannot be received by State Corporation Commission.

OPINION

{*378} I have had on my desk for some time, your letter of the 27th ultimo relative to the organization of a corporation by clients of Mr. Dean Sherry at Alamogordo under Sections 1050 and 1051 of the Codification of 1915, which provides for the filing of the record of the proceedings of a meeting for the organization with the county clerk of the county. You say that Mr. Sherry asks about the filing of the minutes of such meeting with the Commission, and desires to know what the charges would be.

I am unable to see how you can properly receive, for the purpose of effecting the organization of the corporation, any copy of such minutes. We cannot undertake to change the language of Section 1051, which provides for the certification and delivery of the record of the proceedings to the county clerk, so that the State Corporation Commission would be substituted for the county clerk. You call attention to the fact that Section 6 of Article XI of the Constitution provides that the State Corporation Commission shall be the department of government through which shall be issued all charters for domestic corporations, and suggest the question as to whether Sections 1050 and 1051 are inconsistent with this constitutional provision. My opinion is that Section 1051 is inconsistent with the constitution, but it does not seem to me necessary {*379} or proper that you or I should undertake to decide that question. It will be enough for you to hold that you can proceed only in the method prescribed by the constitution and statute. Such corporations as those provided for in Section 1050 can be organized under Section 1055, which distinctly provides that a certificate of incorporation shall be made and filed in the office of the State Corporation Commission. Such a certificate you would, of course, receive and file, and I think it would be well to recommend to Mr. Sherry that his clients should proceed under that section. The expense would be inconsiderable as will be seen by reference to Sections 1003 and 4649 of the Codification, the first of which provides for a small fee to be paid by such corporations for filing certificates, while the other relieves such corporations of the necessity for publishing articles of incorporation.

Perhaps, however, practically, it will make but little difference to the proposed corporation in its operations unless it should become involved in some question as to title to property, because in any litigation as to such a matter, opposing parties might attempt to show that there was no such corporation.