

Opinion No. 16-1887

October 19, 1916

BY: FRANK W. CLANCY, Attorney General

TO: State Corporation Commission, Santa Fe, N. Mex.

Section 6 of Article XI of the Constitution not self-executing.

OPINION

{*434} I have on my desk by reference from your office, a letter from Mr. Dean Sherry, dated October 17, 1916, referring back to the matter of the organization of a corporation under the provisions which appear in the Codification of 1915, in Section 1050 thereof, concerning which I wrote a letter to you on June 5, 1916.

Mr. Sherry seems to think that I did not understand the intention and purpose of his clients in applying to you for permission to file the minutes of a meeting, for which provision is made in Section 1051, but to the best of my recollection I did not understand that the filing with you was to be in addition to the filing with the county clerk in accordance with the provisions in that Section 1051, and what I wrote was, in substance, that I could find no authority under which you could file the minutes of that meeting. Mr. Sherry's idea is evidently that Section 1051, remaining in force, when taken in connection with the provisions of Section 6 of Article XI of the Constitution, for the purpose of harmonizing the two, would permit the filing with you of the same thing which has been already filed with the county clerk.

Section 1050 declares that it shall be lawful for certain kinds of societies or associations, not organized for pecuniary profit, to elect, at a meeting called for that purpose, not less than three nor more than seven persons to serve as trustees or directors, and such officers as may be deemed necessary. Section 1051 provides that the clerk of that association shall make a true record of the proceedings of the meeting and certify and deliver the same to the county clerk, whose duty it is to record the certificate statement and from and after making that record, the trustees or directors and their associated members are vested with the powers, privileges and immunities incident to aggregate corporations, and a certified transcript of the record is made evidence of the existence of such corporation. These two sections provide completely for the creation of the corporation and either are or are not sufficient for that purpose. In view of the sections of the Constitution already referred to, it is difficult to see how the corporation can come into existence in that way.

That section of the Constitution provides that,

"Subject to the provisions of this Constitution, and of such {*435} requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall

be the department of government through which shall be issued all charters for domestic corporations and amendments or extensions thereof, and all licenses to foreign corporations to do business in this state; and through which shall be carried out all the provisions of this Constitution relating to corporations and the laws made in pursuance thereof."

The law compiled in Sections 1050 and 1051 was in existence when the Constitution was adopted, but the legislature has not prescribed any requirements, rules or regulations to point out how the State Corporation Commission shall issue any charter for such corporations as provided for in said sections of the Codification. It has, however, by Sections 1055 et seq., established rules and regulations for the creation through your office of a large part of the corporations provided for in Sections 1050, and I still think, as stated in my letter of June 5, that it would be well for Mr. Sherry to have his clients proceed under those later sections. I am unable to find any authority of law requiring or authorizing you to file in your office the certificate provided for in Section 1051 of the proceedings of the meeting authorized by Section 1050, as the constitutional provisions above quoted are certainly not self-executing but require legislation to make them operative. We have no such legislation as to the corporation treated of in Sections 1050 and 1051, but we do have such legislation as to the corporations authorized by Section 1055.

If Mr. Sherry's clients would now file a certificate in your office, meeting the requirements of Section 1055, having already fully complied with Section 1051, it would put the existence and validity of the corporation beyond all question and the expense of this proceeding would, as pointed out in my former letter, be very small.

I am still of opinion that you must hold that you can proceed only in the method prescribed by the Constitution and statutes and legislation is necessary to put into effect the constitutional provisions. You are authorized by statute only to receive and file certificates of incorporation and there is no authority to receive and file such a certified statement as is declared in Section 1051.

I return herewith the letter from Mr. Sherry.