

**Opinion No. 20-2638**

July 10, 1920

**BY:** O. O. ASKREN, Attorney General

**TO:** Hon. Hugh H. Williams, Chairman, State Corporation Commission, Santa Fe, New Mexico.

Filing Corporation Certificate Which is Not Complete.

**OPINION**

In reply to your letter of July 10th wherein you submit to me for an opinion, a letter from Mr. Coors, also a copy of proposed certificate of incorporation, advise that Section 1055, the act referred to by Mr. Coors, was passed February 11, 1880, and Section 934 was passed in 1905, and the language of said section is so broad that it is my judgment the Legislature intended to include all corporations. This conclusion is supported further by Section 884 wherein it is provided that the entire act of 1905 shall govern in the organization of all corporations for any purpose. Therefore, it is my judgment that not only the requisites of Sec. 1055 should be complied with, but in addition thereto the provision concerning the statutory agent as provided in Section 934, should be complied with. Such a corporation as proposed by the certificate of incorporating may sue and be sued, has a corporate seal, may buy and sell personal property and real property, and there is no question but that a statutory agent should be named, and under Section 934 you should not receive, file or record such certificate unless the certificate complies with the law.

I notice Mr. Coors, at the conclusion of his letter, not only requests, but makes a demand that you file the certificate, evidently implying that in the event of your refusal, legal steps would be taken by him to attempt to enforce such action on your part. It would be a very easy matter for him to designate some one of the five incorporators as the statutory agent, but if he prefers to bring a mandamus suit, that is up to him because if you file the certificate when the same is not in compliance with the law as I understand it, you will be violating the law.