Opinion No. 31-135

April 23, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. Max Fernandez, Supt. of Insurance, Santa Fe, New Mexico.

*{*65}* Your letter of April 22nd, which makes inquiry as to the effect of Senate Bill No. 53 upon certain Insurance *{*66}* Companies who are now doing business in this state, in so far as it pertains to the requirement of a change in name, presents an interesting question.

Your letter is accompanied by a letter from the Bankers Reserve Life Company of Omaha and this makes reference to the Bankers Life Company of Des Moines and the Bankers National Company of Jersey City.

Section 1, of the above Act, defines the term "Bank," and Section 2 then prohibits the use of the words "Bank", "Banker", "Bankers", "Banking", "national", "savings" or "trust" or words of similar import in any foreign language as a designation or name or part of same by any company other than one falling under the definition in Section 1.

Section 3 makes the Act apply to both foreign and domestic corporations and Section 4 makes provision that companies now doing business in the state shall within thirty days after the Act becomes effective make changes in its name when it is using any of the above words as a part of its name, by elimination of the above words.

As we view this matter it seems that it should turn upon the proposition of the right of the companies to continue the use of these words as a part of the name of such companies, rather than upon the class of business in which they are engaged. The phraseology of the Act is sufficiently comprehensive to include all companies who receive any moneys on deposit and who engage in the lending of the monies so received. All other companies are prohibited under the Act from using any of the above terms as a part of the name of such company.

That the charter of a corporation, other than a municipal corporation, is a contract between the company and the state, has been a well settled legal proposition since the decision in the celebrated case of Dartmouth College v. Woodward, 4 Wheat. 518; 4 L. Ed. 629. This case has been followed consistently by all courts of last resort and is now one of the outstanding precedents of American Jurisprudence.

In the State of New Mexico, the charter of a corporation consists of the Articles of Incorporation in cases of domestic corporations and the Certificate of Authority to do business in cases of Foreign corporations.

The power of the corporation commission to admit these companies to do business in the state and function as business entities is a power which has been delegated to it by the legislature and, acting under such delegated power, the corporation commission is the proper state agency to contract with corporations, in so far as their right to do business in the state is concerned.

The name of the corporation must be set forth in the Articles of Incorporation, to use a domestic corporation as an illustration. This is required by Section 32-108, New Mexico Statutes, Annotated, 1929 Compilation. This name in our opinion becomes a part of the assets of the corporation and the state, by and through the commission contracts with the company that it shall have the right to use that particular name.

The Constitution of the United States by Section 10 of Article 1 has provided that no state shall pass any law impairing the obligation of contract and our state constitution in Article 2, Section 19 contains a similar provision.

It would appear therefore that if the Act under consideration is made applicable to corporations, either foreign or domestic, who are now doing business in this state, by virtue of authorization by the corporation commission, that such application would come directly within the inhibitions set forth in the foregoing constitutional provisions.

A case which, to the mind of the writer is controlling, is that of Lornsten v. Union Fishermen's Co-op. Packing Co., 143 Pac. 621. This case arose in the State of Oregon and on appeal from a decision of the lower court, was decided by the Supreme Court of that State. A statute was enacted by the legislature of Oregon which prohibited the use of the term "co-operative" as a part of the corporate name of any company unless such company complied with certain other statutory provisions of an act regulating co-operative associations. The Court cited the Dartmouth College case, supra., and *{*67}* held that in so far as the act applied to corporations already in existence, that it was unconstitutional as being violative of the obligation of contract.

After having given due consideration to the purposes of the Act, which is Senate Bill No. 53, and after having considered the provisions of law which are applicable to corporations in this State and the methods by which they are admitted to do business, it is plain that to attempt to apply the Act to corporations now engaged in business in the State would be repugnant to the constitution.

It is therefore our opinion that the Act, in so far as it attempts to prohibit the use of the words heretofore specified by corporations now doing business in the State of New Mexico, is unconstitutional and void and that these said corporations cannot be made to change their names.

We do not feel called upon to discuss the constitutionality of the bill because of any alleged defect of title at this particular time, such matter will of necessity come up for question at some later date, and has no application to corporations already incorporated or authorized to do business within this state.

By Frank H. Patton,

Asst. Atty. General