

Opinion No. 39-3034

February 23, 1939

BY: FILO M. SEDILLO, Attorney General

TO: State Corporation Commission, Corporation Department, Santa Fe, New Mexico.
Attention: Mr. Casados, Commissioner

{*18} We have your letter of February 20 inquiring whether "The Firestone Tire and Rubber Company," an Ohio Corporation duly licensed to do business here, may maintain a retail store and do business under a name other than its corporate name, to-wit: "Firestone Auto Supply and Service Stores."

After careful consideration I am satisfied that it may.

Although in New York the Attorney General {*19} ruled that "a corporation organized under the general laws of the state is not entitled to use any other name than that stated in its certificate of incorporation," 2 Rep. Atty-Gen. (1912) p. 109, and although it has been generally stated in some cases that a corporation may not use any other name, the weight authority seems to be that it may do so in the absence of statutes prohibiting it, 14 C.J. 309. Some states have statutes prohibiting it, and other states require a certificate to be filed showing the assumed name. We have neither; and the only provision in our statutes with respect to the name is to the effect that it must be stated in the certificate of incorporation, and that it "shall be at all times conspicuously displayed at **its principal office** in this state."

Fletcher on Corporations, Vol. 6, Sec. 2442, states:

"A corporation, when it comes into existence, acquires a legal name by which it is known and identified, and by which in general it contracts and acts. Strictly speaking, this name is the only legal name which it can have It seems quite well established, however, that in the absence of statutory prohibition a corporation may have and be known to the public by more than one name, and that, in addition to the name given by the charter, it may acquire other names by user or reputation. . . . But, however, desirable it may be that a corporation act and contract in its true legal name, this is not always done. Like an individual, a corporation may assume a name other than its legal name and carry on business in such assumed name, but in order to apply this doctrine, incorporation by some name must be established"

And in the annotations to the above text, this quotation is given from one case:

"When a corporation . . . elects to carry on a branch of its . . . business in an assumed name, it . . . is liable for the acts of agents, acting within the scope of their authority, who contract in the assumed name with relation to such branch of the business"

True, the same author in the same section does say, that a corporation "may not, without authority of law express or implied, use any other name," but he gives as authority to support this statement only an Illinois case, and, as stated in the case, Illinois specifically prohibits corporations from transacting any business under any other name than that given them by the charter.

For the above reasons, it is my opinion that without legislation, there is nothing to prevent a duly licensed corporation, domestic or foreign, from carrying on business under a trade name, so long as it displays its legal name at its principal office.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.