

## Opinion No. 55-6128

March 14, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** State Corporation Commission, Corporation Department, Santa Fe, New Mexico.  
Attention: C. R. Garcia, Clerk

You have forwarded to this office a request for clarification of §§ 51-2-14 and 51-6-1, New Mexico Statutes Annotated, 1953.

The former section has a clause which provides that the business of every corporation shall be managed by its directors, who shall respectively be stockholders therein unless otherwise provided in its charter. On the other hand, the latter section has a provision that unless otherwise provided in the certificate or articles of incorporation, or an amendment thereof, it shall not be necessary for directors to be stockholders.

This language is confusing and it is very difficult to determine the legislative intent since both sections were adopted by the Legislature in the 1927 amendatory act.

Further confusion arises since prior to the 1927 amendment, there was a section of our statutes making it mandatory that a director of a corporation must be a stockholder thereof, and this section was never directly amended or repealed. The compilers of our statutes have deleted this section from the 1941 and the 1953 Compilations since it would seem that the 1927 amendment supersedes said mandatory section.

The validity of the 1927 amendment, as it applies to qualifications of directors of corporations in § 51-6-1, may be questionable since this amendment was added to a section of our statutes which might be construed as not being germane to said amendment.

Our Supreme Court might possibly strike that portion of § 51-6-1, New Mexico Statutes Annotated, 1953, which deals with qualifications of directors of corporations for this last mentioned reason under the rule established in *State v. Candelario*, 28 N.M. 573. However, since this statute has been on the books some twenty-eight years without any one raising the question, and because so many corporations have no doubt relied upon same over the years, this office will not rule this section of the statute invalid.

Therefore, since the two sections of the amendatory act are in conflict, it is the opinion of this office that where there is no other way to reconcile the conflict, the last section of the statute placed upon the statute books will be controlling, and the language contained in § 51-6-1, New Mexico Statutes Annotated, 1953, therefore supersedes that contained in § 51-2-14 relative to the requirements of directors. This rule was pronounced by our Supreme Court in *Nye v. Board of Commissioners of Eddy County*, 36 N.M. 169, and has been reiterated on occasion by our Court.

It follows that unless otherwise provided in the certificate or articles of incorporation, or an amendment thereof, it shall not be necessary for directors to be stockholders.

By J. A. Smith

Assistant Attorney General