

Opinion No. 57-249

October 3, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

TO: Inez B. Gill, Fiscal Analyst, Legislative Finance Committee, P. O. Box 1651, Santa Fe, New Mexico

QUESTION

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May employees of the Franchise Tax Department of the State Corporation Commission tabulate and make available to the Legislative Finance Committee a general statistical report of all individual franchise tax reports filed during the preceding year?

CONCLUSION

Yes, provided the report does not in any way identify any individual report.

OPINION

ANALYSIS

This office answers the above question in the affirmative by virtue of the following provision found in Article XI, § 6 of the State Constitution:

". . . The commission shall prescribe the form of all reports which may be required of corporations by this constitution or by law, and shall collect, receive and preserve such reports, **and annually tabulate and publish them.**" (Emphasis ours).

In thus holding, we are not unaware of the confidentiality provision of the franchise tax law found in § 51-13-11, N.M.S.A., 1953 Compilation. But, rather, feel that that provision lends support to our position. It reads as follows:

"It shall be unlawful for any member of the corporation commission, or for any official or employee of such commission, to divulge or make known in any manner whatever **not provided by law** to any person any information by them obtained in the discharge of their official duties under the provisions of this act, or to divulge or make known in any manner **not provided by law** any document or evidence taken or report made under the provisions of this act; Provided, however, that none of the provisions of this section shall apply to any evidence given or documents produced at any hearing by the commission or any court under the provisions of this act. Any violation of the provisions

of this section shall be punished by a fine of not more than one thousand (\$ 1,000.00) dollars, or by imprisonment not exceeding six months." (Emphasis ours).

As may be seen from a reading of the above statute, any disclosure of information provided for by law is permissible. The State Constitution is the highest law of the land and specifically provides that the State Corporation Commission may annually tabulate and publish all reports required by law to be filed with it. We feel, however, that the constitutional provision in question contemplates a general statistical tabulation and report, and is not authority for the proposition that individual franchise tax reports may be made public.

We, therefore, conclude that the Commission may tabulate and make available to the Legislative Finance Committee a general statistical report of all franchise tax reports filed during the preceding tax year, provided that the report does not in any way identify any individual report.