

## Opinion No. 60-02

January 7, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. Alex Pacheco Chief Clerk, Corporation Department State Corporation  
Commission Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. Will the computation to be used in determining fees to be charged a foreign corporation qualifying to do business in this State in the case where the corporate stock consists of shares having no nominal or par value be the same as in the case of domestic corporations?
2. Will a foreign corporation having both par value stock and stock without par value be required to pay the initial fee based only on the par value stock with no additional fee being required for the stock without par value?

#### CONCLUSIONS

1. Yes.
2. No.

### OPINION

#### {\*334} ANALYSIS

The requirements for foreign corporations applying for admission to do business in this State are covered generally in Sec. 51-10-4, N.M.S.A., 1953 Comp. In this connection, the legislative intent as to the treatment of foreign corporations in this State is set out in Sec. 51-10-1 in which it is provided that in the absence of a special mandate the treatment of foreign corporations shall be the same as that of domestic companies. This section provides in part as follows:

{\*335} "Foreign corporations having complied with the law shall have the same powers and be subject to all **liabilities** and **duties** as corporations of a like character organized under the laws of this State." (Emphasis supplied)

The applicable statute of which you inquire in your questions is Sec. 51-12-1, N.M.S.A., 1953 Comp., (P.S.), which sets the fee for a corporation obtaining a certificate of authority at the rate of \$ .10 for each \$ 1,000.00 of the total amount of capital stock

authorized with a minimum of \$ 25.00. This rate is identical to the rate set for domestic companies and although it contains no express statement as to the handling of foreign corporations with no nominal or par value stock, the treatment of these foreign corporations should be the same as that of the domestic companies in view of the legislative policy set out first above.

In this connection, the manner in which fees are handled for domestic companies having no nominal or par value stock is set out in Sec. 51-4-12, N.M.S.A., 1953 Comp. This section provides that stock having no nominal or par value shall be considered (a) equivalent to a share having a nominal value of \$ 100.00; or, (b) the actual value of such stock; or, (c) any other basis which will justly carry out the provisions of the statutes of this state. This section gives the Corporation Commission the authority under its general rulemaking power to establish or select any one of the three methods specified above for the fixing of fees for companies without nominal or par value stock. This office understands that the method which has been used in the past is that of considering no par value stock as the equivalent of the value of \$ 100.00 and if this is the practice which is followed by domestic companies, the same practice should be followed for foreign companies.

However, your attention is called to Sec. 51-13-5, N.M.S.A., 1953 Comp., which fixes, for purposes of computing the corporate franchise tax, the presumptive value of no par value stock at \$ 100 per share for both **foreign** and **domestic** companies but charges the Commission with the duty of examining and revising that value from information compiled in the report and from other information obtained by the Commission. This section further charges the Commission with the duty of seeing to it that in no event shall such value be **less** than as shown on the books of said corporation. In view of this requirement, actual book value of the stock must be used where the presumptive value of \$ 100.00 would be lower than the book value. This section, dealing with computation of value for franchise tax purposes is in line with Sec. 51-4-12, supra, dealing with the computation of value for purposes of assessing a fee for obtaining a certificate of authority.

The second question set out above and having to do with whether or not a company which has both par value and no par value shares may pay the initial fee based only on the par value shares is controlled by Sec. 51-12-1 (4), N.M.S.A., 1953 Comp. This section provides that the fee shall be based upon "the total amount of capital stock authorized". In view of this requirement and no distinction being made between par value and no par value stock, the fee must be computed upon both.

By: Patricio S. Sanchez

Assistant Attorney General