

## Opinion No. 60-17

February 3, 1960

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

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

### QUESTION

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Can the Corporation Department of the Corporation Commission continue, under the Corporate Reports Act of 1959, its practice of forfeiting the right of corporations, both foreign and domestic, to transact business in this State if they fail to file their annual report by March 15, 1960?

#### CONCLUSION

- (a) Foreign corporations -- yes.
- (b) Domestic corporations -- no.

### OPINION

#### {\*359} ANALYSIS

The Corporate Reports Act of 1959 (§ 51-21-1 et seq., N.M.S.A., 1953 Compilation, P.S.) contains in § 7 (51-21-7) the following penalty provision:

"Every domestic or foreign corporation required to file an annual corporate report as provided in section 2 \* \* \* which shall fail to submit the report within the time prescribed in any year shall be liable to a penalty of not less than one hundred dollars (\$ 100) nor more than one thousand dollars (\$ 1,000), to be recovered by suit brought in the name of the state, and, **if the delinquent corporation be organized and existing under the laws of any other state or country, its charter or its permit to do business in this state shall thereupon be canceled.** \* \* \*" (Emphasis supplied)

This penalty provision authorizes the Commission to pursue two separate and distinct courses of action against delinquent companies; the first is the collection of a fine through court action and the second is the cancelation of the permit to do business. The second course of action, however, is restricted to foreign companies and may not be used against domestic companies.

The above quoted provision is similar to the provision contained in former § 51-13-19, N.M.S.A., 1953 Compilation (now superseded by § 51-13-2.1) regulating the penalty for failure to pay the franchise tax.

The question arises as to what enforcement procedure is available to the Commission, apart from a proceeding in court to collect a fine, in the case of delinquent **domestic** companies. The Legislature by the enactment of the Corporate Reports Act of 1959 and the repeal of § 51-2-36, N.M.S.A., 1953 Compilation, withdrew from the Commission the power to cancel the charters of domestic companies **for failure to file the annual report**. However, the power of the Commission to cancel the charter of domestic companies and the permit to do business of foreign companies **for failure to pay the franchise tax** was not withdrawn. On the contrary, 1959 Laws, Chapter 182, Section 3 (§ 51-13-2.1, N.M.S.A., 1953 Compilation, P.S.) expressly authorizes and sets out the procedure by which the Commission can forfeit the right of private corporations, both domestic and foreign, to do business in this state **for failure to pay the franchise tax**.

Inasmuch as you have indicated that a separate department of the Commission handles matters pertaining to the franchise tax, it would appear that such department would be the one concerned with the enforcement of this latter section (§ 51-13-2.1, **supra**). That, however, is a matter concerning the internal functioning of the Commission which is best left for determination to the Commission itself.

By: Patricio S. Sanchez

Assistant Attorney General