

## **Opinion No. 60-242**

December 29, 1960

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

**TO:** Mr. Oscar H. Beasley State Representative Bernalillo County First National Bank Building Albuquerque, New Mexico

### **QUESTION**

#### QUESTION

The Securities Act of 1959 enacted as Chapter 171, Laws of 1959, provides in Section 4 thereof that a prospectus shall contain certain information including "a certified balance sheet." By whom must such balance sheet be certified?

#### CONCLUSION

The balance sheet must be certified by either a certified public accountant or a registered public accountant.

### **OPINION**

#### {\*668} **ANALYSIS**

You request an interpretation of a portion of Section 4, Chapter 171, Laws of 1959, more specifically, that portion compiled as Section 48-18-19.3A (10). Subsection 10 is one of the required portions of a prospectus to be filed with regard to securities described in an application for registration by notification. This subsection reads as follows:

"10. a balance shee as of a date not more than ninety days prior to the date of filing, and, if such balance sheet is not certified, also a certified balance sheet as of a date not more than one year prior to the date of filing unless the fiscal year of the issuer has ended within ninety days prior to the date of filing in which case the certified balance sheet may be as of the end of the preceding fiscal year;"

You request that we attempt to clarify the ambiguity regarding who is to certify the balance sheet described in the above subsection. We conclude that the certification intended by the Act is of a type permitted only of accountants with a certificate from the Board of Public Accountancy. A balance sheet is in effect a financial statement and the certification of a financial statement constitutes the practice of public accountancy as defined by Section 67-23-2, N.M.S.A., 1953 Comp. Furthermore, the certification now under consideration does not appear to be an exempted activity such as is described by Section 67-23-3, N.M.S.A., 1953 Comp. Our conclusion is supported by another

consideration. The Securities Act was devised to protect the purchasers of securities and to provide means whereby the Securities Commissioner could police and control the sale of securities. Therefore, it is only reasonable to conclude that in requiring a certified balance sheet, the legislature intended more than the mere assurance of the issuer and desired that the certification be accomplished by an independent public accountant.

Even if we were to reach a conclusion in interpreting this particular subsection, there is authority in Subsection 12 of the same statutory section whereby the Commissioner could require certification by a certified or registered public accountant. Said Subsection 12 permits the Commissioner to request such other and further information as he may feel is required.

This office has by earlier opinion ruled that where a statute used the words "certified public accountant", any accountant with a certificate from the Board of Public Accountancy, whether it be as a "registered" or "certified" public accountant, would be acceptable. Attorney General Opinion No. 6354, January 17, 1956. We cite this Attorney General's opinion and its conclusion in support of our conclusion that the certification now under consideration may be given by any public accountant certified by the State Board.

By: F. Harlan Flint

Assistant Attorney General