

## Opinion No. 60-244

December 30, 1960

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

**TO:** Mr. Ingram B. Pickett State Corporation Commission Santa Fe, New Mexico

### QUESTION

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May the Corporation Commission release information or permit the examination of Franchise Tax Reports of companies to the State Tax Commission in order that this latter Commission may secure information for the assessment of ad valorem taxes upon these companies?

#### CONCLUSION

See analysis.

### OPINION

#### {\*670} ANALYSIS

The Corporate Reports Act, Sec. 51-21-1 to Sec. 51-21-9, N.M.S.A., 1953 Comp. (PS), permits the release of information in certain instances as follows:

Sec. 51-21-8 provides as follows:

"A. The commission shall, upon application, furnish the necessary blanks in proper form and shall keep safely in its office all corporate reports alphabetically indexed.

B. Information obtained from reports filed pursuant to the provisions of the Corporate Reports Act [51-21-1 to 51-21-9] shall be made available to interested persons during proper hours, except that data contained in section 2, subsection B [51-21-2 Sub. 2], of the Corporate Reports Act shall not be released unless in statistical form classified to prevent the identification of particular corporations; Provided that all reports required under the Corporate Reports Act may be used as evidence at any trial or hearing of the commission, **Provided further that any state agency or department upon written request to the state corporation commission may examine reports filed with the corporation commission upon a showing that the corporate reports sought to be examined are germane to an investigation being conducted by the petitioning agency or department**, and any information revealed is subject to section 8C [Subsection C of this section] of this act concerning the release of such Information contrary to law by any person in the requesting agency or department.

C. Any person who releases information contrary to the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$ 1,000) nor less than one hundred dollars (\$ 100) or by imprisonment in the county jail not more than ninety [90] days nor less than thirty [30] days or by both fine and imprisonment in the discretion of the judge." (Emphasis ours)

It is noted that the proviso underscored above permits the Corporation Commission to release information to other state agencies when such information is "germane to an investigation" being conducted by the requesting agency. This statute in the opinion of this office permits the release to the State Tax Commission of the Franchise Tax Reports of the companies filed in the offices of the Corporation Commission if an investigation is being conducted by the State Tax Commission in connection with the assessment of ad valorem taxes and if this information is germane to that investigation. However, this section permits the release of information only upon reports filed pursuant to the Corporate Reports Act. This Act became law January 1, 1960, and because of the restriction contained in the above-quoted section, only such reports as were filed subsequent to January, 1960, and which were filed pursuant to the Corporate Reports Act may be released.

In connection with reports filed previous to January 1, 1960, Section 51-13-11, N.M.S.A., 1953 Comp., would control. This section provides 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 [51-13-1 to 51-13-12], or to divulge or make known in any manner not provided by law any document or evidence {\*671} 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 [6] months."

It is clear from the foregoing statute that as to reports filed previous to the effective date of the Corporate Reports Act, the Corporation Commission has no power to permit the examination of such reports except under the circumstances set out in the above section, i.e., at a hearing of the Commission or of any court under the provisions of the Act.

By: Patricio S. Sanchez

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