

Opinion No. 63-65

June 12, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Barney Cruz, Jr. Chief Clerk New Mexico State Corporation Commission Santa Fe, New Mexico

QUESTION

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In computing any incorporation or other statutory fee based on capital stock without nominal or par value issued under the provisions of §§ 51-4-1 through 51-4-13, N.M.S.A., 1953 Compilation, what value should be assigned to each share of such stock?

ANSWER

See analysis.

OPINION

{*138} ANALYSIS

Your question requires a determination of the statutory authority of the State Corporation Commission in assigning a value to each share of capital stock without nominal or par value for the purpose of computing incorporation or other statutory fees or taxes.

It is the opinion of this office that section 51-4-12, N.M.S.A., 1953 Compilation establishes the procedures to be used in computing the value of capital stock without nominal or par value.

This section is quoted below: "51-4-12. Computation of value for purpose of fees, taxes or other statutory provisions. -- For the purpose of computing any incorporation or other statutory fee; or any tax or taxes, the determination of which is based on the par value of shares of stock, and for the purpose of any statutory provision limiting the relation between indebtedness and capital stock, each share of stock without nominal or par value **shall be considered the equivalent to a share having a nominal or par value of one hundred dollars (\$ 100)**; or, the actual value of such **stock or any other basis may be adopted which will justly carry out the provisions of the statutes of this state**; and the state corporation commission or any board or commission or officer having jurisdiction in the premises, may require such further statements of fact as may

be reasonable and pertinent to the inquiry, and shall have full power to ascertain the truth of all statements made. . . ." (Emphasis supplied.)

It can be readily seen that § 51-4-12, quoted above, authorizes the State Corporation Commission to use one of three procedures in computing the value of capital stock without nominal or par value; (a) assigning a value of one hundred dollars to each share; (b) taking the actual value of the stock; (c) using any other basis "which will justly carry out the provisions of the statutes of this state".

It is the understanding of this office that it is the practice of the Commission to assign a value of one hundred dollars to each share of capital stock without nominal or par value. This procedure {**139*} is specifically authorized by Section 51-4-12, supra. The selection of one of the three procedures set out in Section 51-4-12 is an administrative determination solely within the discretion of the Commission.

This question has been previously discussed in Attorney General's Opinion No. 60-2 of June 7, 1960. The question there was posed in relation to fees to be charged foreign corporations, and the opinion included a general discussion of the value to be given shares of capital stock without nominal or par value.

By: James E. Snead

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