

Opinion No. 65-45

March 17, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Wayne C. Wolf, Assistant Attorney General

TO: Representative Lawrence Goodell, New Mexico House of Representatives, State Capitol Building Santa Fe, New Mexico

QUESTION

QUESTION

After a corporation is organized under the laws of New Mexico, may one stockholder purchase the interest of all other stockholders without affecting the legal existence of the corporation?

CONCLUSION

Yes, but see analysis.

OPINION

{*77} ANALYSIS

Your question does not involve any interpretation of the provisions of state law relating to the initial organization of a corporation. Your question therefore involves only Sections 51-2-14, 51-2-15 and 51-6-1, New Mexico Statutes Annotated, 1953 Compilation.

Section 51-2-14, *supra*, provides that the directors of the corporation shall be stockholders unless the articles of incorporation provide that they do not have to be stockholders. Section 51-6-1, *supra*, provides that the directors do not have to be stockholders unless the Articles of Incorporation require that they have to be stockholders.

The apparent conflict between these two sections concerns only the question of whether or not the Articles of Incorporation must state the qualification of directors. This conflict has been resolved by Attorney General's Opinion No. 6128, 1955-56, in favor of Section 51-6-1, N.M.S.A., 1953 Compilation.

There is no conflict between these sections, however, on the question of whether or not a director must be a stockholder. Both sections permit a non-stockholder to be a director but they differ with respect to the type authorization needed to take advantage of the statutory permission. Our conclusion, in answer to your question, is that directors

need not be stockholders. The requirements that the business of the corporation be managed by its directors therefore are not affected by the composition of the board so long as the board members meet other statutory qualifications.

Section 51-2-15, supra requires every corporation to elect a president, secretary and treasurer. This section, however, does not require that these officers be stockholders. This section does require the president to be a director but we have already indicated that directors need not be stockholders. Since there is no other provision of law requiring directors or officers to be stockholders, we conclude that one stockholder can acquire the interest of all other stockholders without impairing the legal existence of the corporation. See **Louisville Banking Co. v. Eisenman**, 94 Ky. 83, 21 S.W. 531. Its corporate life would remain intact during the period of time indicated in the corporate charter provided all other legal requirements are met.