

## **Opinion No. 68-104**

October 16, 1968

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Albert P. Benavides Director Corporation & Franchise Tax Departments State Corporation Commission P.E.R.A. Building Santa Fe, N. M. 87501

### **QUESTION**

#### **QUESTIONS**

1. Are dates when a corporation's right to do business in this state is forfeited for failure to pay the annual franchise tax confidential within the purview of Section 51-21-8 (B), N.M.S.A., 1953 Compilation?
2. Are dates when a previously forfeited corporation is reinstated following payment of a delinquent franchise tax confidential within the purview of Section 51-21-8 (B), N.M.S.A., 1953 Compilation?

#### **CONCLUSIONS**

1. No.
2. No.

### **OPINION**

#### **{\*165} ANALYSIS**

An annual franchise tax is imposed upon all domestic and foreign corporations engaged in business in New Mexico, except building and loan associations. This tax is computed on the basis of the book value of the corporation's authorized and issued capital stock represented by the corporation's property and business within the state. This tax is payable to the Corporation Commission by June 1 of each year. Section 51-13-2, N.M.S.A., 1953 Compilation (P.S.).

A corporation which fails to pay this franchise tax by June 1st is notified of the delinquency by mail and, if still not paid within ninety (90) days of notification, the corporation's right to do business in New Mexico is then forfeited. As respects a foreign corporation its charter or permit to do business in this state is canceled. Procedures are available to a forfeited corporation to apply for reinstatement. Section 51-13-2.1 (A), N.M.S.A., 1953 Compilation (P.S.).

Your questions concern whether the dates of forfeiture as well as reinstatement are confidential information not subject to public disclosure. You refer to Section 51-21-8 (B), supra, which concerns the status of corporate reports required to be filed pursuant to Sections 51-21-1 to 51-21-9, N.M.S.A., 1953 Compilation [titled the Corporate Reports Act]. Section 51-21-8 (B), supra, provides as follows:

"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 subsection B of section 51-21-2 New Mexico Statutes Annotated, 1953 Compilation shall not be released unless in statistical form classified to prevent identification of particular corporations."

You will note that subsection B, supra, only prohibits release of identifiable data filed with the commission pursuant to Section 51-21-2 (B), supra. This latter provision provides for the filing of information concerning the status of a corporation's amount of capital stock, treasury stock, the value and location of its property both within and without the state, its gross receipts derived from its property and business within and without the state during the preceding {\*166} year, a balance sheet of its financial condition and certain other information from certain specified types of corporations.

Obviously, Section 51-21-8 (B), supra, only prohibits disclosure of this above information. Nothing in Section 51-21-2 (B), supra, refers to the date of a corporation's forfeiture for failure to pay a franchise tax. Nor does the Act prohibit disclosure of information concerning whether or when a corporation was reinstated to do business. Our analysis of Sections 51-13-2 and 51-13-2.1 supra, reflects that disclosure of the date of a corporation's forfeiture would in no way circumvent nor violate that which is confidential under Section 51-21-2 (B), supra.

We therefore are of the opinion that the date of forfeiture or reinstatement of a corporation's right to do business in New Mexico for failure to pay franchise tax is public information and may be disclosed to interested parties.

By: David R. Sierra

Assistant Attorney General