

Opinion No. 69-112

September 18, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Mark B. Thompson, III,
Assistant Attorney General

TO: Mr. Albert P. Benavides, Director, Corporation and Franchise Tax Departments,
State Corporation Commission, P.E.R.A. Building, Santa Fe, New Mexico 87501

QUESTIONS

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Is a foreign corporation given credit for the fee paid at the time of the initial qualification by the corporation to do business in New Mexico when the corporation is assessed a fee for increasing its capital stock?

CONCLUSION

No.

OPINION

{*179} ANALYSIS

Section 51-12-1 (5), N.M.S.A., 1953 Compilation, 1969 Supp., provides:

"Increase of capital stock of foreign corporations, the same fees for the amount of the total increase as specified in this section for original admission to do business in this state, but in no case less than twenty dollars (\$ 20.00), and in no event shall the fees for any increases of capital stock of foreign corporations exceed Five Thousand Dollars (\$ 5,000.00)"

Section 51-12-1(4), N.M.S.A., 1953 Compilation provides that a foreign corporation shall pay ten cents for each \$ 1,000.00 of the total amount of capital stock authorized, with a minimum fee of \$ 25.00 as the fee for qualifying to do business in New Mexico. It seems clear that under Section 51-12-1(5), the foreign corporation pays a fee of ten cents for each \$ 1,000.00 of the total increase of capital stock for each increase, with a maximum limit on the fee for each increase of \$ 5,000.00. We arrive at this result because prior to the 1967 amendment to this section the proviso clause read:

"Provided, however, that in no event shall the fees for any **or all** increases of capital stock of foreign corporations, exceed the sum of \$ 5,000.00." (Emphasis added).

Because the legislature deleted the words "or all" it seems clear that it was the intention to require the payment of a fee each time the corporation increased its capital stock, but the fee on each increase would not exceed the sum of \$ 5,000.00.

{*180} In any event, it appears that there is no way of interpreting Section 51-12-1 A (5) as providing for a credit for the fee paid upon the original admission of the corporation to do business in New Mexico.

In spite of the apparently clear intent of Section 51-12-1A (5), it is possible to read Opinion of the Attorney General No. 5667, dated February 12, 1953 as interpreting the law to require credit for the opinion was that the fees charged to a foreign corporation for increases in capital stock were constitutional. But in the fifth paragraph the opinion stated that:

"It is the opinion of this office that Section 54-1001, sub-paragraphs (1) and (2), New Mexico Statutes Annotated, 1941 Compilation, as amended, contemplates that a foreign corporation increasing its authorized capital stock into a higher fee bracket should be given credit for prior payment, or payments, made under this section of the law in arriving at the net sum due from the corporation. (Example: prior capital \$ 14,000,000.00, fee \$ 750.00; new capital \$ 22,000,000.00, fee \$ 1,000.00 less credit \$ 750.00; balance due -- \$ 250.00.)"

Apparently the computations in the example were in error since it was not made on the basis of the increase of \$ 8,000,000.00. See New Mexico Laws 1929, Ch. 198, § 1 (4). This mistake was corrected by the issuance of Opinion of the Attorney General No. 5667-A dated March 9, 1953, but the question of when a credit was allowed remained unresolved. Of course, under the law at that time, the corporation could be charged no more than \$ 3,000.00 for all increases, so the Commission had to give a credit for previous fees paid for increases in capital stock. See New Mexico Laws 1929, Ch. 198, § 1(5). The Opinion, unfortunately, does not distinguish between a credit for the original fee at qualification and credit for fees paid upon increase of capital stock after qualification to do business in New Mexico.

We can only conclude, therefore, that Opinion No. 5667 dated February 12, 1953 is not authority for the proposition that the credit may be given for the initial fee paid upon qualification to do business in New Mexico. To the extent that the opinion implies or holds that a credit may be given, it is expressly overruled.