

## Opinion No. 44-4506

May 5, 1944

**BY:** EDWARD P. CHASE, Attorney General

**TO:** State Corporation Commission, Franchise Tax Department, Santa Fe, New Mexico.  
Attention of Don R. Casados, Chairman

We are in receipt of your letter of May 3, 1944, in which you ask our opinion as to whether or not the term "Book value of property in New Mexico" includes only the physical assets or also includes all assets of the reporting corporation.

Subsection 7 of Section 54-1203 of the 1941 Compilation, relating to the annual report of domestic corporations and subsection 7 of Section 54-1204, relating to the annual report of foreign corporations, both provide as follows:

"The value of the property owned and used by the corporation in this state and where situated; and the value of the property owned and used outside of this state and where situated."

By section 54-1202 the franchise tax is levied, based upon the value of its "capital stock represented by its property and business in this state."

The Supreme Court of New Mexico, in *So. Pacific Company v. State Corporation Commission*, 41 N.M. 556, said:

"The words 'property and business in this state,' as used in section 2 of the act, are construed by the State Corporation Commission to mean **all property** of appellee in New Mexico not used exclusively in interstate business, plus the total gross receipts from intrastate business therein; the sum of which represents the authorized and issued capital stock allocated to such corporation's property and business in New Mexico as a basis for the tax. This seems to be the legislative intent."

The usual definition of property found in the cases is that property is nomen generalissimum and extends to every species of valuable right and interest. See *McAllister v. Pritchard*, 230 S. W. 66, 287 Mo. 494.

In *Fruit Growers Express Company v. Brett*, 22 P. (2d), 171, 94 Mont. 281, in construing the term "property" used in their Constitution in connection with taxation, the Court said property of a corporation subject to tax includes all matters, visible and invisible, tangible and intangible, corporeal and incorporeal, capable of private ownership. See also the many cases collected in Volume 34 Words and Phrases, wherein the courts appear to have unanimously held that the word "property" includes intangible as well as tangible assets, unless otherwise limited.

In view of the foregoing, it is my opinion that either a domestic or foreign corporation, in making its annual report, must give the book value of all of its assets, whether they be physical assets or otherwise.

Trusting the foregoing sufficiently answers your inquiry, I am,

By ROBERT W. WARD,

Asst. Atty. General