

**OPINION
74-101**

February 21, 1974 (OPINION)

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58501

Dear Mr. Meier:

This is in response to your letter of 13 February, 1974, requesting an opinion from this office as to whether that sentence referring to fees in section 10-31-13 of the 1973 Supplement to the North Dakota Century Code means that the license fee under section 10-23-07 of the North Dakota Century Code would not be required.

Said section 10-31-13 provides:

"10-31-13. ANNUAL REPORTS. Each professional corporation organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of such reports by the Business Corporation Act giving the name and residence addresses of all officers, directors, and shareholders of such professional corporation as of the thirtieth day of June next preceding the filing of such report. Attached to this report shall be a form certifying that all of such directors and shareholders are duly licensed to render the same specific professional services as those for which the corporation was organized. This certificate shall be made on such form as shall be prescribed and furnished by the secretary of state, shall be signed by the president or vice president and attested by the secretary or assistant secretary of the professional corporation, and sworn to before a notary public by the persons executing the certificate and accompanied by a filing fee of five dollars payable to the secretary of state. No other fees shall be charged therefor. A duplicate original copy of such certificate shall be filed at the same time with the regulatory board which licenses the shareholders described in the certificate and no filing fees shall be charged by the regulatory board for such filing. The regulatory boards issuing the licenses described in section 10-31-01 are hereby authorized and directed to issue the certificates required by section 10-31-32. Such certificates shall be on forms as prescribed and furnished by the secretary of state. The regulatory boards may charge and collect a fee not to exceed five dollars per person so certified to be duly licensed by such regulating board."

Section 10-23-07 of the North Dakota Century Code provides that:

"10-23-07. LICENSE FEES PAYABLE BY FOREIGN CORPORATION. The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state, the sum of seventy-five dollars as an initial license fee.

Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:

1. He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the law if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed report;
2. Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report;
3. From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license shall be paid by the corporation to the secretary of state within thirty days after the mailing of the notice."

Looking to the statutes we think it obvious that they cover two separate and distinct subject matters; i.e., the fee specified in section 10-31-13 is for filing of the certificate as to the licensure of the directors and shareholders to engage in the professional services for which the professional corporation was organized, where as the fee specified in section 10-23-07 is for the license required of any foreign corporation to do business in the state. We note in this same regard that section 10-31-02 does provide that these professional corporations shall be "subject to the duties, restrictions and liabilities of other corporations".

On such basis we must conclude, that foreign professional corporations practicing a profession in this state pursuant to section 10-31-13.1 of the 1973 Supplement to the North Dakota Century Code, must pay (where applicable by the terms of said section 10-31-13.1) the certificate filing fee prescribed by said section 10-31-13, plus the license fee prescribed in said section 31-13.

We hope the within and foregoing will be sufficient for your purposes.

Sincerely yours,

ALLEN I. OLSON

Attorney General