

**OPINION**  
**75-20**

September 30, 1975 (OPINION)

The Honorable Ben Meier

Secretary of State

State Capitol

Bismarck, ND 58505

Dear Mr. Meier:

This is in reply to your letter of September 25, 1975, relative to Section 10-21-13.1 of the N.D.C.C., as enacted by the 1975 Legislative Assembly. You state the following facts and questions:

"At the request of your office and mine the 1975 legislature passed amendments to the Business Corporation Act which now allow my office to dissolve corporations that fail to file their annual reports. In the past I submitted them to your office for dissolution through the courts. Unfortunately, due to lack of time and money your office has not dissolved corporations previously submitted to you. This requires my office to keep them in "limbo" for a period of ten years. After the ten-year period they can then be placed in the dead file and their names can then be given to new corporations. (See N.D.C.C. 10-23-03.1 which was repealed when the new procedure was adopted in the 1975 session).

"With the foregoing as background I respectfully ask your opinion on the following questions:

1. Can the corporations previously submitted to your office for failure to file their annual reports, but which were not dissolved by your office, now be dissolved by my office under the procedure enacted by the 1975 legislature (see N.D.C.C. 10-23-13.1)?
2. If the above question is answered in the negative, what is the status of these previously submitted corporations in light of the fact that N.D.C.C. 10-23-03.1 is now repealed?"

Section 10-21-13.1 of the N.D.C.C., as enacted by the 1975 Legislature provides:

"INVOLUNTARY DISSOLUTION BY SECRETARY OF STATE. - The secretary of state shall notify any corporation failing to file its annual report within three months after the date required under section 10-23-02 that its certificate of incorporation has been terminated. If, however, such corporation shall file its annual report within three months after its termination date, together with a fee of twenty dollars, its charter shall be reinstated by the secretary of state. Such charter may be

reinstated by the district court of the county where such corporation has its registered office, upon petition filed within one year after the date required by section 10-23-02 and upon condition that it file the annual report required together with a fee of thirty dollars. Upon the expiration of the one-year limitation period, a corporation shall forfeit any right to its name and such name may be assigned by the secretary of state to any corporation applying therefor."

Insofar as no action was taken to dissolve most of the corporations certified by your office for failure to file an annual report, we view their obligation to file such a report as a continuing obligation, and section 10-23-03.1, prior to its repeal in 1975, indicated the same since it provided that a corporation which failed to file an annual report for ten consecutive years would forfeit the right to the reserved name of the corporation. Thus the fact the corporation was certified to this office for dissolution did not relieve the corporation from its obligation to file an annual report. As such, we believe the corporation is subject to the provisions of Section 10-21-13.1 enacted by the 1975 Legislature. It is therefore our opinion that the corporations previously submitted to the Attorney General's office for failure to file their annual reports, but which were not dissolved by this office, may now be dissolved by the Secretary of State pursuant to Section 10-21-13.1 of the N.D.C.C.

In view of our reply to your first question, it is not necessary to consider the second question.

Sincerely,

ALLEN I. OLSON

Attorney General