

Date Issued: February 2, 1983 (AGO 83-8)

Requested by: Ben Meier, Secretary of State

- QUESTION PRESENTED -

Whether the Secretary of State may extend the filing date for the filing of an annual report by a corporation.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Secretary of State may extend the filing date for the filing of an annual report by any corporation whenever in his discretion he considers such an extension of time advisable and proper.

- ANALYSIS -

Section 10-23-02 of the North Dakota Century Code states that annual reports for domestic corporations must be delivered to the Secretary of State on or before the first day of August of each year except that the first annual report of a domestic corporation must be filed on or before the first day of August of the year next succeeding the calendar year in which the certificate of incorporation was issued. This statute also provides discretion with the Secretary of State to extend the filing date for the filing of the annual report. The only limitation upon the authority of the Secretary of State to extend the filing date is his discretion. The statute, in part, states as follows:

The secretary of state may extend the filing date for the annual report of any corporation whenever in his discretion he considers such an extension of time advisable and proper.

In reviewing the legislative history behind the enactment of several statutes in Title 10, N.D.C.C., dealing with annual reports and the consequences of not filing annual reports, I am impressed with the discussion as to the intent of these laws. It is quite clear that these laws are designed to administratively update the records of the Secretary of State and to remove obsolete and inactive corporation names from those records. Indeed, with respect to a statute providing for dissolution of corporations, there is discussion in the legislative history concerning the growing number of file cabinets needed to maintain active corporation lists in the Secretary of State's office.

Such legislative goals of removing obsolete and inactive corporate names from the records of the Secretary of State are not furthered in cases where an ongoing inactive corporation has, for one reason or another, failed to satisfy the filing deadline of an annual report. It is my opinion that such cases are primary examples where the Secretary of State should exercise his good discretion to extend the filing date for such annual reports.

Furthermore, as I indicated to you in my letter of December 2, 1982, there is a statutory loophole as for the involuntary dissolution of corporations which have failed to file annual

reports. I am familiar with the fact that legislation is now being sought by your office to correct this situation. However, until such time as legislation is enacted allowing for the automatic dissolution of corporations, it is my opinion that your discretion should be used liberally to extend the filing date of such corporations which have failed to file annual reports.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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