OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Claude Isbell
Secretary of State
Austin, Texas

Attention: Mr. W. Luther Estes

Dear Sir:

Opinion No. O-6610
Re: Under the provisions of Article 7089, R.C.S. of Texas, 1925, as amended, may the Secretary of State furnish certified typewritten or photostatic copies of franchise tax reports of corporations to (1) stockholders qualified to examine the reports, or (2) county tax assessors and collectors?

Your request for an opinion as to whether or not the Secretary of State may furnish certified typewritten or photostatic copies of franchise tax reports of corporations to stockholders qualified to examine such reports or county tax assessors and collectors under the provisions of Article 7089, Revised Civil Statutes of Texas, 1925, as amended, has been received.

You propound three questions, which we shall state and answer separately.

Your first inquiry:

"Is the Secretary of State authorized to furnish either typewritten or photostatic copies of the franchise tax returns to a stockholder qualified to examine the returns?"

The pertinent provisions of the State statutes with reference to the use or disclosure of corporation franchise tax returns, both civil and penal, form part of Acts 1931, 42nd Legislature, page 441, Chapter 265, Sections 2 and 3. The pertinent part of Section 2 of the Act, now Article 7089, R.C.S. of Texas, is as follows:

NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

"Said report shall be deemed to be privileged and not for the inspection of the general public, but a bona fide stockholder owning one per cent (1%) or more of the outstanding stock of any corporation, may examine such returns upon presentation of evidence of such ownership to the Secretary of State. No other examination, disclosures, or use, shall be permitted of said reports except in the course of some judicial proceedings in which the State is a party or in a suit by the State to cancel the permit or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws, including the Comptroller of Public Accounts, State Auditor and the State Tax Commissioner. . . ." (Emphasis ours)

Section 3 of the Act, now Article 1411e, Vernon's Annotated Penal Code, is as follows:

"If the Secretary of State or any other State officer or employee, or any other person, having access to any franchise tax report filed as provided by law, including any shareholder who is permitted to examine the report of any corporation as provided in Section 2 hereof, shall make known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particulars thereof, or any other information pertaining to the financial condition of the corporation set forth or disclosed in such report, he shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or confinement in jail for not exceeding one year, or both." (Emphasis ours)

It is ageneral rule of statutory construction in Texas that all of the sections of a legislative enactment should be construed together so as to harmonize each with the other in order to effectuate the intent and purpose of the Legislature.

It will be noted that "a bona fide stockholder owning one per cent (1%) or more of the outstanding stock of any corporation, may examine such returns upon presentation of evidence of such ownership to the Secretary of State." Suchstockholder is not permitted to use the information so acquired by

him in any judicial proceeding since by the language of the Act in the last sentence thereof such information may only be used in a judicial proceeding in which the State is a party or in a suit by the State to cancel the permit or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State.

It will be noted that the language of Article 1411e, V.A.P.C., provides a penalty for such stockholder to make known in any manner whatever not provided by law any of the data pertaining to the financial condition of the corporation. He is not authorized therefore to use such information acquired by him on his examination in any suit or proceeding brought by him or in his behalf since otherwise he would be subject to the terms of the penal statutes. Since the Act itself does not provide for anything other than a personal examination of the records by the qualified stockholder, it necessarily negatives the right of the Secretary of State to give or the right of a qualified stockholder to demand a certified copy of such report, either typewritten or photostated. It is believed that the action of the Secretary of State in furnishing such certified copy would render him liable under the provisions of the penal statute to the penalties therein contained, since such certified copy would be of no avail to the stockholder unless he himself violated the terms of the penal statute by its use. The answer to your first question is therefore, "no."

Your second question is as follows:

> "Is the Secretary of State authorized to furnish either typewritten or photostatic copies of franchise tax returns to a county tax assessor and collector?"

In the opinion of this department, No. 0-5210-A, approved May 26, 1943, and addressed to your office, it was held that a county tax assessor and collector was entitled to examine franchise tax reports for the purpose of discovering taxable values for ad valorem tax purposes and to make a general examination of all reports of corporations doing business in his county. This opinion was in answer to a general request as to whether or not county tax assessors and collectors were "officers of this State charged with the enforcement of its laws" so as to permit the examination and use of the information contained in such reports under the provisions of Article 7089, supra.

The opinion is quoted in part as follows:

"Under Chapters VII, VIII, IX, X and XI of Title 122 of the Revised Civil Statutes, county tax assessors and collectors are charged with a host of duties and responsibilities in connection with the discovering and assessing for State ad valorem taxes of property located within their respective counties. With respect to such duties and responsibilities we feel that these officials clearly are 'officers of this State charged with the enforcement of its laws.' Since the purpose of the request of the County Tax Assessor and Collector of Harris County is pertinent to his duties in connection with State taxes, we feel that he is privileged to examine the franchise tax reports of corporations doing business or owning property within his county. Consequently, the first two questions stated in your letter are answered in the affirmative. This conclusion is in accord with an opinion of a previous administration of this department, which opinion was written by Assistant Attorney General Maurice Cheek, dated December 31, 1931, and addressed to Honorable Moore Lynn. The fact that the use of such reports for the discovering and assessing of land for State ad valorem taxes may also result in such land being discovered and assessed for county, school or other local taxes in no way alters this conclusion."

Since a county tax assessor and collector is entitled to examine the franchise tax reports of corporations, and since the Act provides that "an examination, disclosure, or use . . . is permitted for the information of any officer, of this State charged with the enforcement of its laws," the word "use" would give to the Secretary of State the right to furnish certified copies thereof for the information and use of such officer and the answer to your second question is therefore, "yes."

Your third question is as follows:

"In the event your answers to the foregoing questions are in the affirmative, does the Secretary of State have the authority to certify that such copies of the franchise tax reports are true and correct copies?"

Since the question of privilege of the information contained in the franchise tax reports is limited to the persons prescribed in the statute, and since it is provided that such information may be used, the making of copies of the returns, whether typewritten or photostated, would justify their certification by the Secretary of State as being true and correct copies of such records. If such copies are to be used in any court proceeding by the officials entitled to so use them, they would be useless unless certified to by the State officer as being a part of his permanent records. The answer to your third question is therefore, "yes."

Very truly yours

ATTORNEY GENERAL OF TEXAS

By C. K. Richards
C. K. Richards
Assistant

CKR:db

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN