

N.D.A.G. Letter to Meier (Sep. 10, 1987)

September 10, 1987

Honorable Ben Meier
Secretary of State
State Capitol
Bismarck, ND 58505

Dear Secretary Meier:

Thank you for your letter of September 1, 1987, concerning the filing of annual reports by domestic and foreign corporations.

North Dakota law as found at N.D.C.C. § 10-23-02 requires domestic corporations to deliver to the Secretary of State their annual reports on or before the first day of August. N.D.C.C. § 10-23-03 provides the same requirement for foreign corporations and their annual reports except that such delivery must occur on or before the first day of April. Both of these statutes provide authority to the Secretary of State to receive annual reports after either the first day of August or the first day April where, to the satisfaction of the Secretary of State, proof has been shown that on or before the first day of the applicable month, such report was postmarked by the U.S. Postal Service, or other carrier service, in a sealed envelope, properly addressed, and with postage prepaid.

Your first question is whether reports delivered to the Secretary of State on a Monday may be deemed in compliance with either of these statutes when the first day of August or April falls on a Saturday or Sunday. In responding to your question, I will assume that the Saturday involved is not a holiday (i.e., the Fourth of July, Christmas, etc.).

Assuming the Saturday is not a holiday, there appears to be no statutory provision allowing the filing of annual corporate reports on a subsequent Monday beyond the first day of the applicable month. Such a filing can only occur with the payment of the late filing penalties as provided by law.

However, where August 1 falls on a Sunday, the answer is different. Sunday is a holiday under North Dakota law. N.D.C.C. § 1-03-01(1). North Dakota law provides that the time in which any act provided by law is to be done is computed by excluding the first day and including the last day "unless the last is a holiday." Where the last day is a holiday, then it is excluded pursuant to this statute. N.D.C.C. § 1-02-15.

I believe this statute on the computation of time is applicable to the filing deadline for annual reports of domestic and foreign corporations. Although the filing deadline statute does not provide a "first day" within which the filing must be done, it certainly provides the last day filing may occur. Thus, it is my opinion that when August 1 or April 1 falls on a Sunday, delivery of the annual reports on the subsequent Monday will be deemed in

compliance with the above annual report filing statutes.

You also ask in your letter whether it is conceivable that annual reports could be postmarked on a subsequent Monday and still be deemed in compliance and be fileable without late filing penalties. This situation could occur where the Saturday is a holiday (e.g., Christmas, Fourth of July, etc.). In such a case, both the Saturday and the Sunday would be considered holidays and the postmarking or delivering of an annual report on the subsequent Monday would still be deemed in compliance with the annual report filing deadline statutes.

I hope this is of help to you in attempting to implement these statutes. If not, please let me know, and we can discuss the matter further.

Sincerely,

Nicholas J. Spaeth

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