

N.D.A.G. Letter to Meier (Sep. 30, 1987)

September 30, 1987

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

Dear Secretary Meier:

Thank you for your letter of September 15, 1987, inquiring as to the applicability of late filing fees and possible involuntary dissolution to those corporations which do not timely return their corrected annual reports pursuant to North Dakota law.

N.D.C.C. § 10-23-02 states that annual reports submitted by domestic corporations which do not conform to the requirements of N.D.C.C. § 10-23-01 shall be returned by the Secretary of State to the corporation for any necessary corrections. The statute further states that where such action occurs, the penalties prescribed for the failure to file an annual report shall not apply only if that report is corrected to conform to the requirements of N.D.C.C. § 10-23-01 and is returned to the Secretary of State on or before 30 days after such corporation receives the annual report from the Secretary of State. The statute authorizes the Secretary of State to extend the filing deadline for the annual report of any corporation if a written application for an extension is received before the filing deadline.

Finally, the statute states that any domestic corporation which fails or refuses to file its annual report for any year within the time prescribed shall be subject to a penalty of \$20.00 if it is filed within 90 days after the due date or \$50.00 if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required ceases to exist and is considered involuntarily dissolved by operation of law.

Your first question is whether a corporation must pay the late filing penalty if it returned its corrected annual report to the Secretary of State beyond the 30 day correction period. N.D.C.C. § 10-23-02 states that the late filing fee would not apply in such a situation only if the report is returned corrected within the 30 day period. Where the report is returned beyond the 30 day period, the appropriate late filing penalty must be imposed.

Your second question concerns a corporation which fails to return a report in need of corrections by the following August 1st. The last sentence to N.D.C.C. § 10-23-02 states that a corporation which fails to file its annual report along with appropriate filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law. This sentence is also repeated in N.D.C.C. § 10-23-02.2. Thus, a corporation which has failed to return an annual report in need of corrections to the Secretary of State within one year of the date required for the

filing of the annual report may be subject to involuntary dissolution. The notice requirements provided for by N.D.C.C. § 10-23-02.1 must be followed, however, before involuntary dissolution occurs. In addition, the corporation may be restored to good standing following its compliance with the requirements of N.D.C.C. § 10-23-02.1.

I hope this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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