

Opinion No. 53-5777

July 8, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Miss Rebecca D. Baca Chief Clerk Franchise Division State Corporation
Commission Santa Fe, New Mexico

{*179} This is in reply to your request for an opinion upon whether the Pecos Irrigation Company is liable for franchise tax upon 176 shares of Par Value Stock of \$ 100 per share which appears on their annual franchise tax report for 1953 as treasury stock.

In preparing this opinion this office has reference to the 1953 franchise tax report on the subject corporation, a letter dated June 29, 1953, from the Secretary-Treasurer of the subject corporation, and a duly certified transcript of proceedings of a meeting of the Board of Directors of subject corporation, held June 23, 1953.

In Opinion No. 3739 which appears also as No. 34, dated March 14, 1941, appearing in Opinions of the Attorney General 1941-42, page 46, this office in construing Section 54-1203 N.M.S.A., 1941 Compilation, as amended, stated that treasury stock was subject to the franchise tax and that until such stock which has been re-purchased by the corporation is cancelled in accordance with Section 54-318, N.M.S.A., 1941 Compilation, as amended, the obligation of the corporation to pay franchise tax upon it remains. It is to be noted that the Legislature by the Laws of 1905, Ch. 79, Sec. 33 which is codified as Section 54-318 provides the specific manner for cancellation of outstanding capital stock.

It is the opinion of this office that prior to the enactment of this statute, cancellation of outstanding capital stock could be performed by any official act of the corporation and such stock would not now be subject to franchise tax for failure to conform to requirements of this section.

It is therefore the opinion of this office that if a corporation has properly cancelled its outstanding stock obligations as appears from the certified transcript prior to the effective date of Laws, 1905, Ch. 79, Sec. 33, it is not subject to franchise tax upon these shares. It is also to be noted that the annual franchise tax report of 1953 has been properly amended by the board proceedings on June 23, 1953, insofar as the real nature of the 176 shares of stock here in question. The annual report indicated that this is treasury stock whereas the minutes of the board's proceedings would indicate that this {*180} should not be so carried either upon the books of the corporation or upon the annual report as treasury stock.

I trust that this is of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General