

## **Opinion No. 57-162**

July 9, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

**TO:** Mrs. Inez B. Gill, Fiscal Analyst, Legislative Finance Committee, P. O. Box 1651, Santa Fe, New Mexico

### **QUESTIONS**

#### QUESTIONS

Can the Legislative Finance Committee and its Staff examine the records of the Income Tax Division of the Bureau of Revenue and the Franchise Tax Division of the Corporation Commission for the purpose of making statistical reports concerning revenue from such taxes and for the purpose of recommending legislation to improve administration of the law involved?

#### CONCLUSION

Only the records of the Income Tax Division of the Bureau of Revenue may be examined for the above purpose.

### **OPINION**

#### ANALYSIS

The Legislative Finance Committee was established by Chapter 3 of the Laws of 1957 to examine the laws governing the finance and operation of departments, agencies and institutions of New Mexico, and all of its political subdivisions for the purpose of recommending changes in the laws, if any are deemed desirable, and draft and present to the Legislature any legislation necessary.

The position of legislative fiscal analyst was created by Section 6 of the above Act to provide the Legislative Finance Committee with a staff assistant in carrying out its duties.

The legislative fiscal analyst and the committee are given inspection powers over documents, material or information of the various agencies or institutions of the State and its political subdivisions. Specifically, Section 6 of Chapter 3 of the Laws of 1957 provides, in part, as follows:

"Each agency or institution of the state and its political subdivisions shall, upon request, furnish and make available to the legislative fiscal analyst and the legislative finance

committee such documents, material or information as may be requested by the members of the committee or the legislative fiscal analyst, **which are not made confidential by law.**" (Emphasis ours.)

The above language is clear and unambiguous and prohibits the inspection of the legislative fiscal analyst and the committee of any records of any agency or institution of the State and its political subdivisions which are made confidential by law.

Chapter 116, Section 1 through 12 of the Laws of 1935, being Section 51-13-1 through 51-13-12 of the N.M.S.A., 1953 Compilation, created the state franchise tax and provided for its administration and enforcement. Section 51-13-11-N.M.S.A., 1953 Compilation, contains a confidentiality clause in regard to records kept by the Franchise Tax Department which reads as follows:

"It shall be unlawful for any member of the corporation commission, or for any official or employee of such commission, to divulge or make known in any manner whatever not provided by law to any person any information by them obtained in the discharge of their official duties under the provisions of this act, or to divulge or make known in any manner not provided by law any document or evidence taken or report made under the provisions of this act; **Provided, however, that none of the provisions of this section shall apply to any evidence given or documents produced at any hearing by the commission or any court under the provisions of this act.** Any violation of the provisions of this section shall be punished by a fine of not more than one thousand (\$ 1,000.00) dollars, or by imprisonment not exceeding six (6) months." (Emphasis ours.)

It will be noted that the State Corporation Commission and any court are exempt from the provisions of this Section as to any evidence given or documents produced at any hearing or trial.

In view of the above quoted Statute, and the two specific exemptions contained therein, we must hold that to allow the Legislative Finance Committee and its Staff to inspect the records of the Franchise Tax Department of the Corporation Commission be a violation of the Statute which makes such records, with few exceptions, confidential by law, and would subject any official or employee of the Corporation Commission who allowed such inspection to the stringent penalty provisions contained therein.

Turning now to the records maintained by the Income Tax Division of the Bureau of Revenue, the provisions governing the State income tax may be found in Sections 72-15-1 through 72-15-48, N.M.S.A., 1953 Compilation. Section 72-15-19 contains a confidentiality clause similar to the one found in the franchise tax law. However, it is the opinion of this office that language found in this Statute would allow an examination to be made of income tax records by the Legislative Finance Committee and its Staff since the primary purpose of the study is the compilation of statistics to aid in the consideration of whether new legislation is necessary. The pertinent language referred to is the following:

"Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any member of the tax commission (Bureau of Revenue), any deputy, agent, clerk or other officer or employee, or for any office deputy, agent, clerk or employee of any such officer, charged with any duty connected with or relating to the assessment or collection of the income tax, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act. **Nothing herein shall be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns and the items thereof,** or the inspection of the attorney general or other legal representative of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted to recover any tax or any penalty imposed by this act." (Emphasis ours.)

Of course, any publication of statistics should be so classified as to prevent any identification of particular reports or returns and the items found therein.

We realize that this decision as it pertains to those records kept by the Franchise Tax Department of the Corporation Commission will hamper the efficient operation of the Committee in making its study. However, the Legislature saw fit to limit the Committee's investigatory powers over documents and materials of the various departments and political subdivisions of the State to those which are not made confidential by law. Any correction of this problem will have to be made by the Legislature, and not this office.