

OFFICIAL OPINION NO. 78-56, Annual reports of corporations subject to Public Utilities Commission regulations

December 11, 1978

The Honorable Lorna B. Herseth
Secretary of State
State Capitol
Pierre, South Dakota 57501

Official Opinion No. 78-56

Annual reports of corporations subject to Public Utilities Commission regulations

Dear Mrs. Herseth:

You have requested an official opinion from this office based on the following factual situation:

FACTS:

Under SDCL 47-2-2, a number of problems have arisen regarding public utilities exempt from filing the annual corporate report with the Secretary of State. This statute exempts public utilities from filing annual corporate reports if they are governed by specific statutes under the Public Utilities Commission.

Based on the above facts, you ask the following question:

QUESTION:

Are business corporations engaged in business as motor carriers exempt from filing annual corporate reports with the Secretary of State's Office?

SDCL 47-2-2 provides:

All foreign and domestic corporations for profit are governed by chapters 47-2 to 47-9, inclusive, except railroad corporations under the regulation of the public utilities commission

and foreign insurance companies and the requirements for filing annual reports shall not apply to domestic insurance companies and, further, except other profit corporations, governed by specific statutes such as banking, co-operative, public utilities and savings and loan, which are subject to the provisions of those specific statutes except in so far as reference is made to the general law governing corporations or to provisions of this title. Where such reference exists chapters 47-2 to 47-9, inclusive, shall govern in that respect.

To my knowledge, there are no statutes in Title 49 which require corporations regulated by the Public Utilities Commission to comply with the annual report requirements or generally with Chapter 47-2. Thus, applying SDCL 47-2-2 to this situation, I believe it follows that there is no requirement for such carriers, regulated under SDCL 49-28, to file the annual report required by SDCL 47-9-1. This is an absurd set of circumstances, since the information required by the Public Utilities Commission of the carriers does not require the same sort of information required by the annual report for corporation purposes under SDCL Title 47.

During the 1977 Legislative Session, legislation was introduced to specifically require carriers to file this corporate annual report, but the legislation died in committee. Thus, the Legislature has recently had an opportunity to deal with the question, and because of the action which was taken, in my view has indirectly thereby expressed an intent that no such corporate annual reports should be required of carriers regulated by the Public Utilities Commission under Chapter 49-28. Thus, this is a matter which, if it is to be changed, would seem to me to require legislation. Accordingly, the answer to your question is yes.

Respectfully submitted,

William J. Janklow
Attorney General

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