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STATE CAPITOL
PHOENIX, ARIZONA

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DEPARTMENT OF LAW OPINION NO. 75-2 (R-2)

REQUESTED BY: **GEORGE M. DEMPSEY**
Executive Director
Arizona Corporation Commission

QUESTION: Must either a domestic or a foreign "business trust", as defined in A.R.S. § 10-501, or both, comply with the reporting requirements set forth in A.R.S. § 10-199?

ANSWER: Yes. Both must comply with the reporting requirements of A.R.S. § 10-199.

For the reasons described below it is our opinion that both foreign and domestic business trusts must comply with the reporting requirements set forth in A.R.S. § 10-199, which provides:

A. The commission shall by rules or regulations require that a certificate of conformance be filed prior to the issuance of either a certificate of incorporation to a proposed corporation or a license to do business in this state to any corporation stating whether any person serving either by election or appointment as an officer, director or incorporator of a corporation doing business in this state has any one or more of the following to be true:

1. Been convicted of either a felony or misdemeanor involving a transaction in securities within the ten-year period immediately preceding his election or appointment.

2. Been convicted of any other crime, essential elements of which are fraud and misrepresentation to the public, within the ten-year period immediately preceding his election or appointment.

3. Is subject to an order, judgment or decree of a court of competent jurisdiction, entered within the ten-year period immediately preceding his election or appointment, which order, judgment or decree enjoins or declares unlawful any conduct or practice in connection with a transaction involving securities.

B. If any of the provisions enumerated in paragraphs 1 through 3 of subsection A of this section exist the commission may require the incorporators of the proposed corporation to come before the commission and show cause why the commission should not deny the incorporators a certificate of incorporation or license to do business in this state.

C. Each existing corporation shall file such certificate with the annual report required to be filed by § 10-211. Such annual report shall not be accepted for filing until such corporation complies with this subsection.

D. If any of the provisions enumerated in paragraphs 1 through 3 of subsection A of this section exist the commission may require the officers or the corporation to come before the commission for a hearing for the purpose of determining if there has been a violation of the provisions of title 44, chapter 12, involving the sale of securities of the corporation.

E. If a member of the board of directors or an officer of an existing corporation is convicted of a violation of the provisions of title 44, chapter 12, involving the sale of securities of the corporation, the commission may require the corporation to come before the commission and show cause why the commission should not revoke the corporation's certificate of incorporation or license to do business in this state.

F. An officer or member of the board of directors of any corporation who willfully misrepresents or conceals any information required in the provisions of paragraphs 1 through 3 of subsection A of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment in the county jail for not to exceed one year, or both.

Article 14, Section 1 of the Arizona Constitution provides in pertinent part:

Section 1. The term "corporation," as used in this Article, shall be construed to include all associations and joint stock companies having any powers or privileges of corporations not possessed by individuals or co-partnerships. . . . (Emphasis added.)

The definition of "corporation in A.R.S. § 10-101 substantially tracks the above quoted language of the Arizona Constitution.

The use of the phrase "all associations" in the Constitution and the statutory definition in conjunction with the further phrase "having any powers or privileges of corporations not possessed by individuals or co-partnerships" used in the Constitution clearly indicates sweeping coverage was intended with regard to the type of business entities or associations within the definition of corporation in Arizona.

In Reilly v. Clyne, 27 Ariz. 432, 234 P. 35 (1925), our Supreme Court held the "Massachusetts trust" or "business trust" to be in all essentials a corporation and, therefore, was required to comply with the filing requirements of the Corporation Code. This position was reiterated in Rubens v. Costello, 75 Ariz. 5, 251 P.2d 306 (1952). Both cases indicated that the corporation laws would be broadly applied to prevent any evasion of their provisions.

Article 18 of the Arizona Corporation Code (A.R.S. §§ 10-501, et seq.) became effective April 3, 1965. This new article sets down certain requirements for business trusts, including required filings with the Corporation Commission, publication of articles and specified powers. More importantly, this article indicates business trusts are to be taxed as corporations (A.R.S. § 10-508) and are subject to applicable corporate laws. A.R.S. § 10-509 provides:

Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include, without limitation, such applicable provisions of law as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate and otherwise deal in or with real and personal property. (Emphasis added.)

This section of the Corporation Code clearly permits application of general corporation statutes pertaining to the filing of reports and statements with the Corporation Commission. The drafters of this provision apparently also contemplated future enactments of law regarding corporations in using the phrase "provisions of law from time to time in effect".

In view of the broad definition of "corporation" used in Article 14, Section 1 of the Constitution and A.R.S. § 10-101 and the broad interpretations of the Corporation Code in the Reilly and Rubens cases, supra, it is clear that A.R.S. § 10-509 should be liberally construed as requiring business trusts to file the information required by A.R.S. § 10-199. The information about prior convictions or injunctions involving securities or fraud violations of corporate principals required by A.R.S. § 10-199 would serve the same legitimate public purpose with regard to business trusts as it does with regard to other corporations. Assuming the absence of expansive case law in this area, nevertheless, A.R.S. § 10-509, in requiring compliance with reporting statutes as enacted, clearly contemplated that business trusts would be required to comply with A.R.S. § 10-199.

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It also should be noted that the provisions of Article 18 of the Corporation Code when read are clearly meant to apply to foreign as well as domestic business trusts. Therefore, the language of A.R.S. § 10-509 requiring compliance with statutes such as A.R.S. § 10-199 also applies to such foreign business trusts.

Practically, compliance with A.R.S. § 10-199 will involve a business trust's providing the same information about initial trustees and subsequently elected trustees in the manner it is required of corporate incorporators, directors and officers by that section and Corporation Commission General Order I-3.

Respectfully submitted,



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The Attorney General

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