



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

October 22, 1968

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Attention Mr. Kenneth I. Kimbro

Opinion No. M-295

Re: Whether the Comptroller is authorized to furnish copies of certain franchise tax reports to the State Securities Commissioner upon his request and for his necessary information and use in enforcing the securities laws of the state with which he is charged.

Dear Mr. Calvert:

Your recent letter requests an opinion as to whether the Comptroller is authorized to furnish copies of certain franchise tax reports to the State Securities Commissioner upon his request and for his necessary information and use in enforcing the securities laws of the State, the enforcement of which is his duty.

You say he quotes as his authority for his request Article 581-28, Vernon's Civil Statutes, which reads, in part, as follows:

" . . . In the course of an investigation looking to the enforcement of this act, or in connection with the application of a person or company for registration or to qualify securities, the Commissioner or Deputy Commissioner shall have free access to all records of the Board of Insurance Commissioners, including company examination reports to the Board and reports of special investigations made by personnel of the Board, as well as records and reports of and to any other department or agency of the state government . . . " (Emphasis added.)

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In your request you quote, in part, from Article 12.10, Title 122A, Taxation-General, Vernon's Civil Statutes, as follows:

"Art. 12.10 Reports Confidential

"Reports made under Articles 12.08 (or 12.08 and 12.09) shall be privileged and not for the inspection of the general public, but a bona fide stockholder owning one (1) or more shares of the outstanding stock of any corporation may examine such reports upon presentation of evidence of such ownership to the Secretary of State. No other examination, disclosure or use shall be permitted of the reports except in the course of some judicial proceedings in which the State or any bona fide stockholder is a party or in a suit by the State to cancel the permit or forfeit the charter of such corporation or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws, including the Comptroller of Public Accounts, the State Auditor and the State Tax Commissioner; provided that the Secretary of State may in his discretion for good cause shown disclose to any interested person the names of the officers and directors and agents for service and the principal office and place of business of any corporation filing a franchise tax report." (Emphasis added.)

You also quote, in part, from Article 1.031, Title 122A, Taxation-General, Vernon's Civil Statutes, as follows:

"Art. 1.031 Examination of Records

"(1) For the purpose of carrying out the terms of this Title the Comptroller or any authorized agent shall have the authority to examine at the principal or any other office in the United States of any person, firm, agent, or corporation permitted to do business in this State, all books, records and papers and also any officers or employees thereof, under oath; and failure or refusal of any person, firm, agent, or corporation to permit such examination shall,

upon certification of such refusal by the Comptroller to the Secretary of State, immediately forfeit the charter or permit to do business in this State until such examination as is required to be made is completed. The Comptroller shall not make public or use said information derived in the course of said examination of said books, records and papers and/or officers or employees except for the purpose of a judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party. ****" "Art. 1.031 added by Acts 1967, 60th Leg. p. 1022, ch. 449, eff. July 1, 1967." (Emphasis added.)

You request an interpretation of Article 12.10 of Title 122A, Taxation-General (formerly Article 7089, V.C.S. of Texas) as such law relates to Article 1.031 of Title 122A, supra. The immediate question, supra, is whether the Comptroller is authorized to furnish copies of certain franchise tax reports to the State Securities Commissioner.

Decision of this question involves two considerations:

(1) Has Article 1.031 repealed Articles 12.10 and 581-28? and, (2) If not, does Article 12.10 authorize the Comptroller of Public Accounts to furnish copies of otherwise confidential records to the Securities Commissioner as an officer of this state charged with the enforcement of its laws pursuant to Article 581-28?

It is the opinion of this office that Article 1.031 does not relate to or conflict with Article 12.10 nor is there any repeal by implication of the latter statute. The 1967 recodification statute on this matter (Article 1.031) grants powers to the Comptroller which are in the nature of visitorial powers for auditing purposes and is deemed a general statute, referring to all taxes under Title 122A, Taxation-General. The 1961 statute (Article 12.10) is a specific statute and relates to the confidential nature of and use of records or reports filed as franchise tax returns by a corporation with the State Comptroller. It concerns only franchise taxes and is permissive in that it merely allows the Comptroller to furnish confidential information to other officers charged with the enforcement of the state's laws. The caption of Article 1.031

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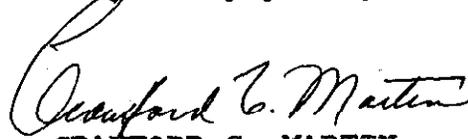
(Acts of the 60th Leg., Reg. Session, 1967, Chapter 449, Pg. 1022) refers to "an Act concerning examination of records by the Comptroller for tax purposes," while Article 12.10 refers to reports made by the corporation itself. Since a specific statute will control over the general provisions of another statute, Article 12.10 will control over Article 1.031 in this matter. 53 Tex.Jur.2d 232, Statutes, Sec. 161.

As to the question of whether Article 12.10 permits the Securities Commissioner to obtain copies of such reports, we must hold that he is an "Officer of this State charged with the enforcement of its laws," and as such, he is entitled to request and receive any records, including franchise tax reports, pursuant to Articles 581-28 and 12.10, which are specific statutes, and Article 1.031 must yield thereto.

SUMMARY

The Securities Commissioner is an "Officer of the State charged with the enforcement of its laws," pursuant to Article 581-28, Vernon's Civil Statutes, and within the meaning of Article 12.10, Title 122A, Taxation-General, Vernon's Civil Statutes, and is entitled to request of and receive from the State Comptroller of Public Accounts of the State of Texas copies of franchise tax reports made by corporations to the said Comptroller.

Very truly yours,



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APPROVED:

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