

**OPINION**  
**47-52**

February 8, 1947 (OPINION)

CORPORATIONS

RE: Foreign - Sale of Stock in State

This office is in receipt of your letter of February 6, enclosing a letter received by your office from Kingman, Cross, Morley, Cant & Taylor, in Minneapolis, in which you ask for an opinion from this office on the following proposition.

Where a foreign corporation has made application for license to sell its stock in this state, the stock has been approved, and such license has been granted, must such a corporation also comply with the foreign corporation act under the following circumstances:

The corporation does not actually sell stock in this state but merely solicits offers to purchase stock in the state of North Dakota and the sale is made in another state. Can it be held to be doing business in this state, and thus be required to comply with the foreign corporation statutes?

As I understand from a conversation had with you, the soliciting of offers to purchase is done by a person or firm duly licensed to sell securities in this state. No actual sale is made in this state. The broker merely solicits offers to purchase stock and these offers are forwarded to the home office in the foreign state, and no sale is consummated until approved by the home office.

Section 10-0405 of the North Dakota Revised Code of 1943 provides that it shall be unlawful for any person, co-partnership, association, or corporation to sell or offer for sale or by means of any advertisement, circular, prospectus, or any other form of public offering, to attempt to promote the sale of any securities or to induce any person, firm, association, or corporation in this state to become financially interested in any securities unless such securities are exempt by the provisions of section 10-0403, without first filing with the commission: (Then follow ten provisions not necessary to be set out here, as I presume that these conditions have been complied with.)

Section 10-0407 provides that every foreign corporation before selling or offering for sale any securities not exempt by the provisions of this chapter shall file its legal irrevocable consent that actions may be commenced against it in a proper court in any county in which a cause or action may arise by the service of process on its registered agent within this state, if it has complied with provisions requiring the maintenance of a registered office and registered agent as required by section 10-1710.

The question then arises whether under the facts presented the method which the corporation in question intends to pursue is within the purview of section 10-0407, that is, does this corporation offer securities for sale or does it attempt to induce any person, firm,

association or corporation in this state to become financially interested in any securities, under the provisions of section 10-0405.

This corporation maintains that it is not offering any stock or securities for sale in this state. Through its broker it merely solicits offers to purchase, but no sales are made in this state. The offers are submitted to the home office in the home state of the corporation, and sales are not complete until approved by the home office. In other words, the offer may be accepted or it may be rejected, but such action is taken in the home office. Numerous cases support this theory, among them, Stockard v. Morgan, 85 U.S. 27, 46 L. ed. 785; Rath Packing Company v. General Storage Co. (Mich.) 192 N.W. 632; Yerza v. Randazzo, (Mo.) 288 S.W. 20; Eagle Mfg. Co. v. Arkell & Dauglas (N.Y.) the interstate commerce feature, rather than upon the theory that the sale was consummated in another state.

It is generally held that the solicitation of orders for goods within a state by a foreign corporation through a resident broker or commission merchant who maintains a local office at his own expense, and duly licensed in his own state, and the shipment of goods by the corporation into the state directly to the purchasers pursuant to the order is business in interstate commerce, and hence is not doing business within the state so as to subject the corporation to a local statute regulating such corporations or prescribing conditions of their doing business within the state.

It is also quite generally held that a foreign corporation, soliciting orders for its goods within a state, the same to be shipped to the purchasers from another state, is not doing business within the state under a local statute prescribing conditions of doing business therein by foreign corporations, although the corporation or its agent maintains an office within the state for the accommodation of its soliciting agents. See Toledo Furnace Co. v. Lansing Company (Michigan) 198 N.W. 864; Trent Dispatch Co. v. Wood (Okla.) 140 P. 1138. These cases hold that this principle clearly prevails where the orders obtained by the soliciting agents are subject to acceptance or rejection by the corporation in another state. See also Cheney Brothers Co. v. Massachusetts, 246 U.S. 147, 62 L. ed. 632.

In view of the fact that the securities or stock for which the corporation in question soliciting offers of purchase has been approved by the Securities Commission and an agent has been appointed upon whom service may be made, it is the opinion of this office that such corporation is not required to qualify under the foreign corporation act of the State of North Dakota.

NELS G. JOHNSON

Attorney General