

OPINION
50-28

February 2, 1950 (OPINION)

CORPORATIONS

RE: Service

Re: Section 10-1733 N.D.R.C. 1943

Yours of this date to the attorney general, re acceptance of service of process in suits against foreign corporations, has been received and referred to my desk.

Section 10-1733 N.D.R.C. 1943 has not been amended, and the statute is now as it appears in the N.D. Revised Code of 1943. This section, in our opinion, gives a plaintiff suing a foreign corporation which does not maintain a business office in this state and who has no registered agent in the state for acceptance of service, the right to make service upon such corporation by "delivering to and leaving with the Secretary of State," etc. "three copies of the process and a fee of three dollars." The statute makes no reference to an "acceptance" of service by the secretary. Service is complete so far as the plaintiff is concerned when he has delivered the necessary copies and paid the statutory fee to the secretary. It then becomes the duty of the secretary to comply with the provisions of section 10-1734.

Any other construction of this section might shield a foreign corporation from suit. If such service as above outlined is not a good service and the corporation wishes to avoid suit, it may make a special appearance in the action and object to the sufficiency of the service.

It is our opinion, therefore, that the secretary should accept an offer of service as above outlined in all cases of foreign corporations who have no regularly "registered agent" in the state.

WALLACE E. WARNER

Attorney General