

**OPINION**  
**58-48**

January 27, 1958            (OPINION)

CONTRACTORS

RE: Competitive Bidding - Preference

We have received your letter and enclosures of January twenty-one in which you requested an opinion of the Attorney General on the residence of a domestic corporation for purposes of the statute giving preference to resident contractors in the construction of public buildings in a case where the domestic corporation is owned by a foreign corporation and a majority of the directors are residents of a foreign state.

The statute in question is section 48-0206 of the 1953 Supplement to the N.D.R.C of 1943. It provides that in the awarding of a public building contract preference is to be given to ". . . the lowest qualified bidder who has been a resident of the state for at least one year. . . ." There appears to be no North Dakota cases construing this statute and no statutes which define residence for corporations. We assume that the domestic corporation in this case is otherwise qualified and that if at all, he has maintained a residence in this state for at least one year.

The general rule (as stated in C.J.S., Corporations Sec. 1794) is that a corporation is a resident of the state by or under the laws of which it was created, and of that state only. The rule appears to hold true even though it may be doing business in another state and may have part or all of its property there, and even though some or all of its officers, members or stockholders are citizens or another state. (See *Hobson v. Metropolitan Casualty Co. of N.Y.*, 300 Pac. 87, 90 (Cal. 1931).

In the case of *Grand Forks County v. Cream of Wheat Co.*, 41 N.D. 330, 170 N.W. 863, 866 (1918) the Supreme Court of North Dakota commented on the residence of a domestic corporation for purposes of the tax law. It appeared there that Cream of Wheat had been incorporated under the laws of North Dakota but that its principal offices were located in Minneapolis, all its business was conducted outside the state and it held no property in the state. Grand Forks County brought the action to collect property taxes on the value of shares of stock in the corporation, contending that though intangible such property was taxable just as if held by a private citizen ("resident"). In the face of the above facts, the county's contentions were sustained by the supreme court which noted that, "We are dealing with an artificial being which was created, and now exists and exercises its powers by virtue of the laws of this state, and which by the very law of its creation became a citizen of this state, and from the inherent law of its nature cannot emigrate and become a citizen elsewhere." It is clear from a full reading of the case and the subsequent United States Supreme Court decision affirming it (253 U.S. 325, 64 L. ed. 931), that the words resident and citizen were used interchangeably and considered synonymous.

We believe that the legal principle recognized in the Cream of Wheat case is controlling in the situation you have suggested. Broadly stated, it is that a domestic corporation is a resident of the state under whose laws it was incorporated and that no one may look beyond its charter and consider other facts in determining its residence. As applied here, in determining residence, the principle prevents us from considering the fact that the corporation is owned by a foreign corporation and that a majority of its directors are residents of a foreign state.

While it appears to have been the intent of the Legislature in enacting section 48-0206 to favor residents of the state over non-residents, we must presume that they were aware of the above stated rules of determining the residence of a corporation. Had they intended to exclude from the benefits of the statute domestic corporations owned by non-residents they could have done so by express language. They might well have considered that a domestic corporation owned by non-residents is subject to the same tax burden as any other domestic corporation, and thus in fairness, it should also be eligible for the same benefits.

It is therefore the opinion of the Attorney General that a domestic corporation whose directors are non-residents and whose stock is owned by non-residents is nevertheless a resident of this state within the meaning of section 48-0206 of the 1953 Supplement to the N.D.R.C. of 1943.

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Attorney General