



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 22, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 181

Mr. Sherman A. Parks, Jr.
Deputy Assistant - Legal Counsel
Office of Secretary of State
Capitol -- 2nd Floor
Topeka, Kansas 66612

Re: Corporations--Foreign Corporation--"Doing Business
in Kansas" Defined

Synopsis: The activities of the foreign corporation rather than the personal activities of the shareholders, officers, directors of the corporation are considered in determining whether said corporation is "doing business" as defined by K.S.A. 17-7303. If the corporation neither maintains an office, a place of business, nor a distribution point in the State of Kansas it does not fall within the definition of what constitutes "doing business" and need not obtain authorization pursuant to K.S.A. 17-7301.

* * * *

Dear Mr. Parks:

You inquire whether the described activities of a foreign professional corporation constitute "doing business in Kansas" by the corporation within the meaning of K.S.A. 17-7303.

The factual situation described indicates the foreign professional corporation has ceased to function as a corporate entity or clinic in Kansas and has withdrawn from this state. However, the doctors

Mr. Sherman A. Parks, Jr.
page 2
August 22, 1979

who organized the corporation were retained on the staff of a Kansas hospital in their individual capacities. The doctors have continued to bill their patients through the foreign professional corporation by means of its computer billing system.

K.S.A. 17-7303 provides:

"Every foreign corporation that has an office or place of business within this state, or a distributing point herein, or that delivers its wares or products to resident agents in this state for sale, delivery or distribution, shall be held to be doing business in this state within the meaning of this act"

The statute explicitly defines what is "doing business" under the provisions of K.S.A. 17-7301. A foreign corporation is "doing business" if it maintains an office, a place of business or a distribution point in Kansas. Further if there is delivery of wares or products to agents within this state for sale, delivery or distribution the activities fall within the definition of what is "doing business."

It should be pointed out that our inquiry is not whether the activities in Kansas constitute the transaction of business such as to make the foreign corporation amenable to process pursuant to the long-arm statute, K.S.A. 60-308. But rather the issue is whether the activities of the corporation are within the purview of the statutes requiring registration and compliance with applicable provisions governing admission of a foreign corporation to do business.

A corporation is a legal entity created by law, with an identity distinct and separate from that of its members or organizers. The rights and obligations of the corporation are normally separate from those of the shareholders. Only activities by the foreign corporation falling within that defined by statute as "doing business" obligate and necessitate obtaining authorization from the Secretary of State pursuant to K.S.A. 17-7301.

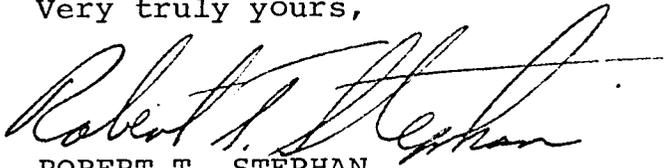
Admittedly the factual situation presented is not the typical one in that we are concerned with a professional corporation as opposed to a corporation formed pursuant to the General Corporation Code of Kansas. The Professional Corporation Law of Kansas, K.S.A. 1978 Supp. 17-2706, et seq. authorizes the formation and incorporation of professional corporations and permits said corporations to offer to perform professional services. To qualify as a professional corporation the corporation must be organized pursuant to the provisions of K.S.A. 1978 Supp. 17-2706, et seq. A foreign corporation is not authorized to provide professional services in Kansas.

Mr. Sherman A. Parks, Jr.
page 3
August 22, 1979

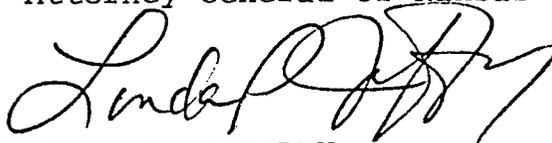
It is concluded from the facts presented that the doctors are not maintaining offices or places of business in Kansas as agents for the foreign corporation. The doctors are acting in their individual personal capacity. The billing of patients through the computer billing system of the foreign corporation is merely incidental to the private practice of the doctors.

In summary, it is our opinion that the foreign corporation is not providing professional services in Kansas. The activities described do not constitute "doing business" under K.S.A. 17-7303 as said activities are not attributable to the corporation but rather to individual doctors acting in a private capacity and not as agents of the corporation.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



LINDA P. JEFFREY
Assistant Attorney General

RTS:LPJ:bjh