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July 8, 1985

ATTORNEY GENERAL OPINION NO. 85- 77

The Honorable Jack Brier  
Secretary of State  
State Capitol, 2nd Floor  
Topeka, Kansas 66612

Re: Corporations -- Foreign Corporations -- "Doing Business"  
in Kansas; Actions Sufficient to Constitute; Corporation  
as Member of Partnership

Synopsis: A corporation which is a partner in a general or  
limited partnership is not, in the absence of any  
further action, "doing business" in this state so as  
to require compliance with the provisions of K.S.A.  
17-7301 et seq., even though the partnership itself is  
authorized to do business in Kansas. However, if the  
corporation uses the partnership as a means of  
conducting its own business, it may be "doing  
business" as defined in K.S.A. 17-7303 and so be  
required to comply. Cited herein: K.S.A. 17-7303,  
60-308.

\* \* \*

Dear Mr. Brier:

As Kansas Secretary of State, you request our opinion on a  
question concerning the provisions of Kansas law which deal with  
foreign corporations doing business in this state. Specifically,  
you inquire whether a foreign corporation which is a partner in  
either a general or limited partnership doing business in Kansas  
is itself doing business here so as to require compliance with  
K.S.A. 17-7301 et seq. These statutes require foreign corporations  
desiring to do business in Kansas to file certain information  
with your office, which then issues a certificate authorizing  
such activities.

It would be our opinion that a determination of whether such a corporation may be required to obtain a certificate to do business in this state is dependent on the facts of the situation. The language of K.S.A. 17-7303 is instructive and states:

"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:

Provided, That foreign corporations shall have the right to receive, take, purchase and hold, by mortgage or otherwise, any securities or liens executed, given transferred or intended to represent or secure loans upon real or personal property situated in this state, or to sell, assign transfer, sue upon, foreclose or otherwise enforce the same; and any foreign corporation which engages in Kansas solely and exclusively in the activities enumerated in this proviso shall not be required to obtain authority under this act to engage in such activities in this state." (Emphasis added.)

Both this statute and its predecessor, K.S.A. 17-506 [repealed, L. 1972 ch. 52, §153], have been construed by Kansas courts to require the exercise of some of the functions and the carrying on of the ordinary business for which the company is organized. Toedman v. Nooter Corporation, 180 Kan. 703, 707 (1957), quoting 20 C.J.S. Corporations §1920; Scrivner v. Twin Americas Agricultural & Industrial Developers, Inc., 1 Kan.App.2d 404, 411 (1977), quoting Lumber Co., v. State Charter Board, 107 Kan. 161, 162 (1920). Corporations engaging only in interstate commerce are not subject to such statutes. See, e.g., Thorneycroft v. Emery Air Freight Corp., 122 Ariz. 408, 595 P.2d 200 (1979). Under certain factual settings, a foreign corporation present in Kansas solely as a partner in an authorized partnership, and not as a separate entity, would not be "doing business" in the state.

While it may be observed that the standard for "doing business" under K.S.A. 17-7303 is higher than that used to determine jurisdiction over a foreign corporation for purposes of service of process. K.S.A. 60-308. This is intentional, for in Kansas, as elsewhere, the minimum contacts required for purposes of the

registration statutes are greater than those required for long-arm jurisdiction. Scrivner, supra, 1 Kan.App.2d at 413-414; Goodwin Brothers Leasing, Inc. v. Nouis, 366 N.E.2d 38, 43 (Mass. 1977), citing Mahanna v. Franconero, 222 F.Supp. 277 (E.D.Mich. 1963). See also Davis-Wood Lumber Co. v. Ladner, 50 So.2d 615 (Miss. 1951). A decision that a foreign corporation is "doing business" in a way sufficient to subject it to jurisdiction is "not conclusive that a corporation is doing business within the state" so as to require compliance" with a qualification statute such as K.S.A. 17-7303. Carolina Components Corp. v. Brown Wholesale Co., 250 S.E.2d 332, 333 (So.Car. 1978). See also Malavasi v. Villavecchia, 163 A.2d 214 (N.J. Super. 1960) (business can be sufficient for service but not for licensing requirements).

The situation of a foreign corporation which is a partner in a Kansas partnership is analogous to a foreign corporation holding stock in a Kansas corporation. In both, the corporation is contributing to the operation of an authorized organization-- either through money (limited partner) or helping determine how the organization is run (as general partner or stockholder). It is a general rule that mere ownership of stock does not constitute doing business in the state. Lumber Co., supra, 107 Kan. at 162; Hermatic Seal Corp. v. Savoy Electronics, Inc., 290 F.Supp. 240 (S.D.Fla. 1967); Mid-Continent Telephone Corp. v. Home Telephone Co., 307 F.Supp. 1014 (N.D.Miss. 1969) (dealing with a qualification statute). However, if ownership of stock is the primary objective of the corporation (as in a holding company), or the foreign corporation controls the partnership as an alter ego, this activity could be sufficient for "doing business." 20 C.J.S. Corporations §1841.

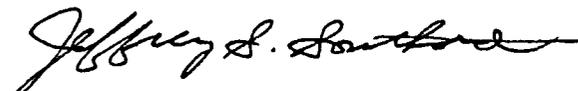
Under this analogy, a corporation would not be "doing business" by merely being a partner. However, as this rule does have exceptions, each situation would have to be evaluated individually. For example, if the corporation was engaged (as a partner) in the same type of activities which it normally engaged in as a corporation (i.e. drilling for oil), with the other partners acting solely as investors, registration by the corporation would be required. The partnership would be no more than the corporation's agent, a situation which has been held elsewhere to constitute "doing business" by the corporation. Fosen v. United Technologies Corp., 484 F.Supp. 490 (S.D.N.Y. 1980).

In conclusion, a corporation which is a partner in a general or limited partnership is not, in the absence of any further action, "doing business" in this state so as to require compliance with the provisions of K.S.A. 17-7301 et seq. even though the

partnership itself is authorized to do business in Kansas. However, if the corporation uses the partnership as a means of conducting its own business, it may be "doing business" as defined in K.S.A. 17-7303 and so be required to comply.

Very truly yours,

  
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