



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

April 2, 1975

Opinion No. 75-147

Mr. Sherman Parks
Office of the Secretary of State
The State House
Topeka, Kansas 66612

Dear Mr. Parks:

I am in receipt of your correspondence dated March 3, 1975, from Mr. Jeffrey Warren requesting an opinion from this office as to whether the described business activities of his client will constitute "doing business" in Kansas for purposes of determining whether the appropriate authorization is needed from the Secretary of State pursuant to K.S.A. 17-7301.

As you have correctly indicated, the relevant statute, 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: Provided, That foreign corporations shall have the right to receive, take, purchase and hold, by mortgage or otherwise, any securities of liens executed, given, transferred or intended to represent or secure loans upon real or personal property situated in this state, and 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."

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The above definition approaches the problem by stating both what is and what is not "doing business" under the provisions of K.S.A. 17-7301. Clearly, the described business activity indicates his client will neither maintain an office, a place of business, nor a distribution point. Furthermore, there is no delivery of wares or products to agents within this state for sale, delivery, or distribution. In other words, his client's activities do not fall within the definition of what is "doing business."

This office concurs in the conclusions that the described business does come under the language found in the proviso. Clearly, the foreign corporation he represents is engaged in the purchase, through assignment, of securities. There is little dispute that mobile homes constitute personal property, and accordingly, a purchase money security interest in such property does constitute a security given to secure a loan upon personal property situated in this state. See, K.S.A. 8-1-201(37); K.S.A. 9-107.

Therefore, it is the opinion of this office that the activities he has described do not amount to "doing business" under K.S.A. 17-7303 and accordingly, his client does not need to obtain authorization from the Secretary of State pursuant to K.S.A. 17-7301 prior to soliciting dealers of mobile homes to sell or assign their retail installment sales contracts. This opinion is limited solely to and based entirely on the facts he has described in the enclosed transmitted letter.

Yours' very truly,



CURT T. SCHNEIDER
Attorney General

CTS/HW/ksn

cc: Mr. Jeffery Warren

Enclosure

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March 3, 1975

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ROBERT O. WIENKEOffice of the Secretary of State
The State House
Topeka, Kansas 66612Attention: Mr. Sherman Parks
Counsel for the Corporation Division

Dear Mr. Parks:

Last Friday afternoon I discussed by telephone with Mr. John Martin of the Attorney General's office a question arising under Section 143 of the General Corporation Code of Kansas, Kansas Statutes Sec. 17-7303. After I discussed my question with Mr. Martin, he indicated his willingness to render an official opinion but advised me that he could do so only pursuant to your request. At Mr. Martin's suggestion, I am writing you this letter to set forth the facts so that you may pass it along to Mr. Martin for his consideration.

THE STATUTE IN QUESTION - KANSAS
STATUTES SECTION 17-7303

The General Corporation Code of Kansas provides that "no foreign corporation shall do any business" in Kansas unless it first obtains from the Secretary of State authority to do business in Kansas. (Kansas Statutes Sec. 17-7301). What is "doing business" within the meaning of the foregoing statute is defined in Kansas Statutes Section 17-7303, which reads as follows:

"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

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situated in this state, and 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."

FACTS

My client is a Delaware corporation having its principal place of business in Chicago, Illinois. It is in the business of taking assignments of retail installment contracts from credit sellers located in several states (but not Kansas). The retail installment contracts evidence credit sales of mobile homes by mobile home dealers to individual buyers. The mobile home dealers assign the retail installment contracts to my client as follows: After a mobile home dealer sells a mobile home to a buyer pursuant to a retail installment contract, the dealer sells and assigns its rights under the retail installment contract (including a purchase money security interest in the mobile home) to my client by mailing the contract to my client's Chicago office. My client, in turn, mails its check to the dealer in the amount agreed upon for the purchase of the contract. My client resells contracts assigned to it to institutional investors, and "services" the contracts for the institutional investors from its Chicago office. Payments called for in the contracts are made by the mobile home buyers directly to my client's Chicago office.

My client proposes to commence taking assignments of retail installment contracts from Kansas dealers in the manner outlined above. To accomplish that purpose, my client will have a representative in Missouri who will travel through Kansas to solicit dealers to sell retail installment contracts to my client in Chicago. Those dealers who wish to do so will execute assignments of contracts to my client and mail the contracts to Chicago. My client will in turn pay the dealers for the contracts by mailing checks to the dealers from Chicago. My client's representative will often be traveling throughout the state of Kansas soliciting business from Kansas dealers, but he will not personally take assignments of contracts from Kansas dealers, disburse monies to Kansas dealers, or even maintain an office or business location within the state.

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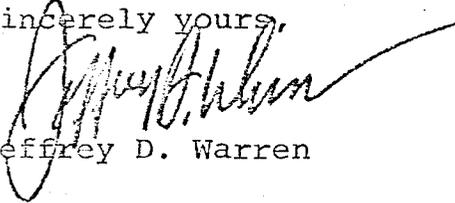
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QUESTION PRESENTED

The question presented is whether, by conducting the activities described above, my client would be viewed as a foreign corporation "doing business" in Kansas. It is my feeling that my client would not be required to obtain authority from the Secretary of State under the General Corporation Code to take assignments of contracts as described above because the activity would fall within the proviso of Kansas Statutes 17-7303, quoted above, which defines what is not "doing business."

I will be most grateful for your opinion based upon the facts set forth in this letter. If there is any additional information which you may require in considering the question, please feel free to call me collect and I will provide you with whatever you wish. Thank you for your cooperation.

Sincerely yours,



Jeffrey D. Warren

JDW/jv

cc: John J. Kollker