



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 123

Mr. Sherman A. Parks
Office of Secretary of State
2nd Floor - The Statehouse
Topeka, Kansas 66612

Re: Corporations--Filings, Reports, Fee, Franchise
Tax--Doing Business in this State

Synopsis: Assuming that IML Freight, Inc., still refrains from "doing business in this state", as defined by K.S.A. 17-7203, the corporation does not have to apply for authority to do business in Kansas.

As a condition precedent to imposition of the franchise tax under K.S.A. 17-7505, the foreign corporation must be engaged in doing business in this state. Unless and until IML Freight, Inc., or any other foreign corporation, does an act which constitutes doing business in this state, no annual report or franchise tax may be imposed upon those corporations engaged exclusively in interstate commerce.

* * *

Dear Mr. Parks:

You have requested my opinion concerning whether foreign corporations exclusively engaged in interstate commerce are required to apply for authority to do business in this state pursuant to K.S.A. 17-1701. Further, you have asked whether such foreign corporations are subject to the franchise tax required by K.S.A. 17-7505.

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K.S.A. 17-7301 provides in pertinent part:

"(a) As used in this act, the words 'foreign corporation' means a corporation organized under the laws of any jurisdiction other than this state.

(b) No foreign corporation shall do any business in this state, through or by branch offices, agents or representatives located in this state, until it shall have filed in the office of the secretary of state of this state an application for authority to engage in business in this state as a foreign corporation."

K.S.A. 17-7505 states:

"(a) Every foreign corporation organized for profit, or organized under the cooperative type statutes of the state, territory, or foreign country of incorporation, now or hereafter doing business in this state, and owning or using a part or all of its capital in this state, and subject to compliance with the laws relating to the admission of foreign corporations to do business in Kansas, shall make an annual report in writing to the secretary of state, showing, in such form as the secretary of state may prescribe, the financial condition of the corporation at the close of business on the last day of its tax period next preceding the date of filing, but if a corporation operates on a fiscal year other than the calendar year it shall give written notice thereof to the secretary of state prior to the thirty-first day of December of the year of commencing such fiscal year."

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"(c) At the time of filing its annual report, each such foreign corporation shall pay to the secretary of state an annual franchise tax in an amount equal to one dollar (\$1) for each one thousand dollars (\$1,000) of the corporation's shareholder's equity attributable to Kansas, except that no such tax shall be less than twenty dollars (\$20) nor more than two thousand five hundred dollars (\$2,500)."

The provisions of this latter statute provides no exceptions to the rule. Thus, the central question to this inquiry is whether foreign corporations engaged exclusively in interstate commerce while within the boundaries of Kansas are required to register for authority to do business in the state.

K.S.A. 17-7303 defines the phrase "doing business in this state" as:

"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."

Under the express language of K.S.A. 17-7301:

"No foreign corporation shall do any business in this state, through or by branch offices, agents or representatives located in this state, until it shall have filed in the office of the secretary of state of this state an application for authority to engage in business in this state as a foreign corporation."

Implicit in its meaning is recognition that there is no requirement to file the application for authority to do business

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until the foreign corporation decides to embark upon a course of action which in some manner brings their business pursuits within the definition of "doing business in this state" under K.S.A. 17-7303. Until the foreign corporation decides to "do business in Kansas", there are no requirements that they apply to do business in this state. Under letter dated April 15, 1974, Mr. Dennis R. Clark, Controller for IML Freight, Inc., stated the following concerning IML's business activities in Kansas:

"IML Freight, Inc., is an interstate motor line involved in interstate commerce only. We have no employees or property with situs in the State of Kansas. Our vehicles traverse your state, hauling freight from and to points without your state. We have no intrastate activities in the state of Kansas."

As to the present validity of these assertions, I cannot comment. Assuming that IML Freight, Inc. still refrains from "doing business in this state", as defined by K.S.A. 17-7303, it is my opinion that the corporation does not have to apply for authority to do business in Kansas. Determination whether a foreign corporation is "doing business in this state" is the responsibility of the Secretary of State.

The annual information report and franchise tax is imposed on "every foreign corporation organized for profit . . . and now or hereafter doing business in this state . . . ". See, K.S.A. 17-7505. As a condition precedent to imposition of the franchise tax under K.S.A. 17-7505, the foreign corporation must be engaged in doing business in this state. Unless and until IML Freight, Inc., or any other foreign corporation, does an act which constitutes doing business in this state, no annual report or franchise tax may be imposed upon those corporations engaged exclusively in interstate commerce.


This decision is in accord with the Court's ruling in Dawson v. Sessions, 95 Kan. 272, 147 P. 789 (1915) wherein it was held:

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"The provisions of the corporation act of 1913 requiring a foreign corporation to file annual statements and to pay an annual fee, as a condition to doing business in this state, do not apply to corporations engaged solely in interstate commerce, and as to corporations engaged in both local and interstate business they relate only to the conditions upon which intrastate business may be done."

My opinion is in accordance with this discussion. There is, of course, no authority under the Kansas corporation code whereby a foreign corporation may obtain authority to do business in this state, and pay no franchise tax therefor as required by K.S.A. 17-7505. If the corporation presently has obtained authority to do business, then, it may withdraw if it so chooses. If the corporation has tendered annual reports for filing, without the payment of the required franchise tax, and it chooses not to perfect its authority by payment of those fees, the Secretary of State should take appropriate steps under the code to cancel any authority presently outstanding, or other such action as may be appropriate.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv