



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 18, 1979

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

ATTORNEY GENERAL OPINION NO. 79-142

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

Re: Procedure, Civil--Process--Substituted Service
of Foreign Corporations

Synopsis: The Secretary of State is not authorized to act as agent to accept service of any process on behalf of a foreign corporation when there is a resident agent for such corporation and an absence of showing that the resident agent cannot with reasonable diligence be found at the registered office.

* * *

Dear Secretary Brier:

We are in receipt of your letter of May 4, 1979, requesting our opinion as to whether your office is authorized to accept service of any process on behalf of a foreign corporation, where there is a resident agent for such corporation and an absence of showing that the resident agent cannot with reasonable diligence be found at the registered office.

K.S.A. 60-304(f) authorizes your office to receive service for foreign corporations, as follows:

The Honorable Jack H. Brier

Page Two

July 18, 1979

"Whenever any foreign corporation authorized to transact business or transacting business without authority in this state shall fail to appoint or maintain in this state a resident agent upon whom service of legal process or service of any such notice or demand may be had, or whenever any such resident agent of such corporation cannot with reasonable diligence be found at the registered office in this state, or whenever the certificate of authority of any foreign corporation shall be forfeited, then and in every such case the secretary of state shall be irrevocably authorized as the agent and representative of such foreign corporation to accept service of any process, or service of any notice or demand required or permitted by law to be served upon such corporation."

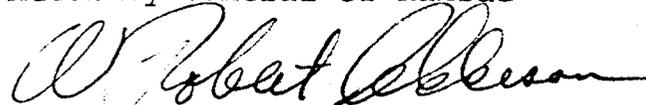
The foregoing statutory provision is the only authority your office has to serve as resident agent for a foreign corporation, and in our judgment, your authority to serve as a corporation's agent for accepting service of process cannot be expanded beyond specific statutory authority. As determined in Greene v. Commonwealth, by Marshall, 275 Ky. 637, 122 S.W. 2d 523 (1938), statutory provisions authorizing substituted service of process are to be strictly construed.

Thus, unless one of the conditions prescribed in 60-304(f) exists, the secretary of state does not have authority to accept service of process on behalf of a foreign corporation. Applying this to your specific question, if a resident agent has been appointed for a foreign corporation, your office can act as agent for such corporation only when the appointed resident agent cannot be found with reasonable diligence at the corporation's registered office. Absent such showing you are not authorized to accept process or other documents as agent for such corporation, and you may refuse to receive or receipt for any such process or documents.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk