



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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May 27, 1980

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ATTORNEY GENERAL OPINION No. 80- 112

The Honorable Jack H. Brier
Secretary of State
State Capitol, 2nd floor
Topeka, Kansas 66612

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

Synopsis: A foreign corporation which was previously authorized to do business in Kansas, which authority was cancelled for failure to file an annual report, is not required to reinstate that authority if it has no office or place of business in Kansas, no distributing point in Kansas or does not deliver its wares or products to resident agents in this state for sale, delivery or distribution. Under circumstances as set forth above, the Secretary of State is not required to refund the franchise taxes, or any portion thereof, paid by such corporation during the period of time it was authorized to do business in Kansas. Cited herein: K.S.A. 17-7303.

* * *

Dear Secretary Brier:

You have inquired as to whether a foreign corporation which was previously authorized to do business in Kansas, but had such authority cancelled for failure to file an annual report, is required to reinstate its authority to do business in Kansas if it has no office or place of business in Kansas, it has no

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resident sales force in Kansas, its sales are consummated at its Missouri office and it merely ships goods into Kansas via interstate commerce. If we should determine that the corporation in question is not required to reinstate its authority to do business in Kansas, you also have asked whether your office should, if requested by the corporation, refund any or all of the franchise taxes previously paid to your office.

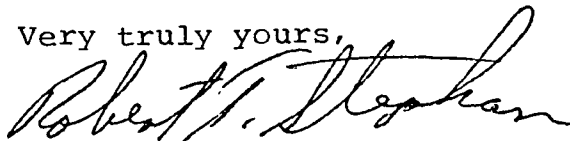
You have noted in your request that K.S.A. 17-7303 is the statute which sets out those acts and circumstances which constitute "doing business in Kansas" by a foreign corporation for purposes of the general corporation code. Those are:

1. Having an office or place of business in Kansas, or
2. Having a distributing point in Kansas, or
3. Delivering its wares or products to resident agents in this state for sale, delivery or distribution.

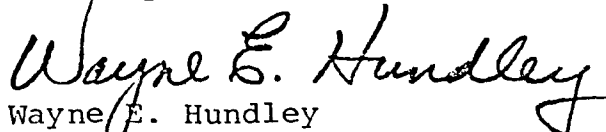
If we assume that the facts as related to you by the corporation are true, it appears conclusively that the corporation is not required to reinstate its authority to do business in Kansas for the reason that it is not "doing business in Kansas" as contemplated by our statutes generally and more particularly by K.S.A. 17-7303.

In response to the second part of your inquiry, we are convinced that your office is under no duty to refund the franchise taxes, or any portion thereof, previously paid by the corporation. Franchise taxes are paid by foreign corporations for the privilege of "doing business in Kansas"; having "purchased" such privilege, the corporation in question could have established an office or place of business in Kansas, it could have had a distributing point here, or it could have delivered its wares or products to resident agents in this state for sale, delivery or distribution. The fact that it may have chosen not to do any of these is totally irrelevant. It had the authority to do so if it had so chosen.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Wayne E. Hundley
Deputy Attorney General

RTS:WEH:bjh