



STATE OF KANSAS

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July 9, 1984

ATTORNEY GENERAL OPINION NO. 84- 66

Emily E. Cameron
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Kansas Department of Health and Environment
Forbes Field
Topeka, Kansas 66620

Re: Mentally Ill, Incapacitated and Dependent Persons --
Adult Care Homes -- Foreign Corporations as Operators;
What Constitutes Doing Business

Synopsis: A foreign corporation which: (1) is licensed by the Kansas Department of Health and Environment to operate and manage an adult care home and (2) has entered into a management contract with a care home owner for the purpose of managing and operating the home, is doing business within this state and is therefore subject to the foreign corporation registration requirements of K.S.A. 17-7301 et seq. Cited herein: K.S.A. 17-7301, 17-7303, K.S.A. 1983 Supp. 39-923, 39-927, K.S.A. 39-937, 39-954, 39-956, 39-958, 60-304.

* * *

Dear Ms. Cameron:

You have requested our opinion concerning the applicability of the Kansas foreign corporation code (K.S.A. 17-7301 et seq.) to the operator-manager of a Kansas adult care home licensed pursuant to K.S.A. 1983 Supp. 39-923 et seq. Specifically, your question concerns whether a foreign corporation, by virtue of the operation and management of an adult care home, is doing business within this state and is thus subject to the filing requirements of K.S.A. 17-7301.

You have advised our office that The Manor of Kansas City, an adult care home licensed by the Kansas Department of Health and Environment (KDHE), is owned by a registered Kansas corporation, Consolidated Health Care Fund I (CHCF), and is operated and managed pursuant to a written contract by Life Care Centers of America, Inc. (LCCA), a Tennessee corporation. K.S.A. 1983 Supp. 39-927 requires: "An application for a license to operate an adult care home shall be made in writing to the licensing agency [KDHE] . . . and shall contain such information as the licensing agency shall require . . ." It is your contention that an out-of-state corporation is subject to the foreign registration provisions contained within the Kansas corporation code (K.S.A. 17-7301 et seq.) due to the language of K.S.A. 39-937, which states: "All pertinent laws of this state and lawfully adopted ordinances and rules and regulations shall be strictly complied with in the operation of any adult care home in this state."

The question regarding foreign registration has become one of importance in light of the difficulty in obtaining service of process on out-of-state licensees pursuant to the receivership provisions contained within K.S.A. 39-954 et seq. K.S.A. 39-958 requires a hearing on a receivership application within seven days of its filing. Service of the application upon the owner or the operator, as the case may be, is required by K.S.A. 39-956, pursuant to the code of civil procedure. See, e.g. K.S.A. 60-304. While we are not in a position to comment on the feasibility of service of process within the statutory period of time, we do not believe K.S.A. 39-937 to be the mechanism by which registration would be compelled.

K.S.A. 17-7301(b) concerns the activities of foreign corporations, and states in pertinent part:

"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. 17-7303 defines what constitutes doing business in this state:

"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 . . ."

The Kansas Supreme Court in Panhandle Agri-Service, Inc. v. Becker, 231 Kan. 291 (1982), held that for a foreign corporation to be found to be doing business in this state, one of the three elements set out above had to be met. Therefore, we must examine the nature of the business of LCCA and its relationship to The Manor in order to determine whether filing as a foreign corporation is required.

LCCA entered into a management contract with CHCF for the expressed purpose of managing the day-to-day functions of The Manor. Pursuant to this management contract, LCCA provides an administrator to the home. This administrator agrees to be bound by the management techniques, recommendations and supervision of LCCA. LCCA is to provide such services as developing efficient accounting procedures, providing quality nursing staff, monitoring and approving fiscal transactions, and requiring attendance of home personnel at management seminars. The contract additionally compensates LCCA with a set percentage of the home's revenue.

Counsel for LCCA maintains that while it is a consulting firm, it is not doing business in this state, in that it does not have an office, distribution center or sells its wares in this state. There is a regional administrator in Kansas City, Missouri, to assist The Manor manager. Counsel advises that all manuals, approvals, recommendations, etc., come from the Cleveland, Tennessee office. In essence, the Cleveland office directs the actions taken by the administrator. While the administrator is paid by the owners through a reimbursement to LCCA, the administrator is responsible to LCCA. Moreover, we are advised that LCCA has filed a "Designation of Registered Agent for Service of Process" in the Register of Deeds of Wyandotte County, Kansas. Additionally, counsel advises that prior to the execution of any management contract, the premises are viewed by a company representative.

20 C.J.S. Corporations §1829 (1940) sets out a general rule "that when a foreign corporation transacts some substantial part of its ordinary business in a state, continuous in character, it is doing, transacting, carrying on or engaging in business therein" p. 46. See also 36 Am.Jur. 2d Corporations §317 (1968). In the case of State ex rel. v. Knights of the Ku Klux Klan, 117 Kan. 564 (1925), the court, after citing numerous cases from other jurisdictions, held that a foreign corporation which performs in Kansas the functions which it has in its state of incorporation is doing business within the meaning of the Kansas foreign corporation laws. See also Toedman v. Nooter Corporation, 180 Kan. 703 (1957), 13 Words and Phrases, p. 194 (1965).

It is apparent that LCCA is in the business of managing adult care homes, in that it enters into similar types of contracts

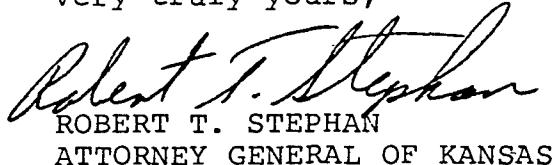
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throughout the United States. While it may act as a consulting firm in the sense that all of its actions are subject to owner approval, it takes an active part in the physical operations of the home. While it has no office or distribution point, we believe that the management contract constitutes a sale of its services and expertise. It makes recommendations to CHCF, implements them, and monitors the overall operation of the home. The business practices and actions taken by LCCA have a direct bearing on the amount of its fee, and as such have a direct impact on the residents of the home and indirectly on the general public welfare.

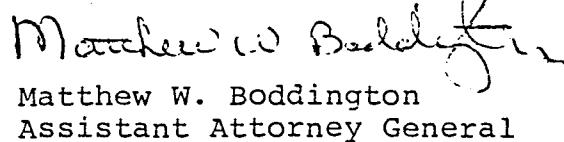
Counsel for LCCA is of the opinion that the imposition of a filing and registration fee could be in violation of the Interstate Commerce Clause of the U.S. Constitution. However, in view of the contract provision contained at paragraph 2.26, which requires that the owner be responsible for all fees incurred by LCAA in the operation of this contract, we feel that this contention is not applicable, as no burden would be placed on LCCA because of its status as a foreign corporation.

Therefore, it is our opinion that an out-of-state corporation which is licensed by the state to operate and manage a Kansas adult care home and which has entered into a management contract with the care home owner for the purpose of managing and operating the day-to-day affairs of the home is doing business in this state and is subject to statutory foreign corporation registration requirements.

Very truly yours,


ROBERT T. STEPHAN

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