

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

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October 30, 1972

DEPARTMENT OF LAW OPINION NO. 72-27 (R-81)

REQUESTED BY: ERIK V. THORNE
Director
Division of Building Codes

- QUESTIONS:
1. Must a foreign corporation be licensed by the Arizona Corporation Commission before a license will be issued by the Division of Building Codes?
 2. Are mobile units which are manufactured for use as school rooms or commercial offices, such as real estate or construction site offices, within the purview of A.R.S. § 44-1701.7?
 3. Does Chapter 143, Laws of 1972 (A.R.S. §§ 44-1701 through 44-1714), require repairmen to be licensed by the Division of Building Codes?
 4. Are mobile homes installed prior to the effective date of Chapter 143, Laws of 1972 (May 19, 1972), required to comply with the tiedown requirements of said Chapter?
 5. Does the word "component" include in its definition items supplied to manufacturers, such as sinks, hot water heaters, electrical fixtures and other appliances?
 6. Are any residence requirements imposed by Chapter 143, Laws of 1972, regarding the issuance of licenses?
 7. Is the State of Arizona exempt from the provisions of Chapter 143, Laws of 1972?
 8. Must a manufacturer who possesses a manufacturer's license also possess a dealer's license if that manufacturer engages in the business of selling the units which he has manufactured?

9. Must a licensed manufacturer or dealer who has more than one location for manufacturing or selling obtain a "branch office license" and bond?
10. Should a member of the Hearing Board disqualify himself when a matter before the Board pertains to his business?
11. Do storage buildings such as those sold by Montgomery Ward, Sears, etc., for the storage of tools, boats and other equipment come within the purview of Chapter 143, Laws of 1972?
12. Does the Division of Building Codes assume jurisdiction in areas in which no building codes or ordinances have been promulgated by the local village, town or county?
13. What distinction exists, if any, between a mobile home on wheels and a mobile home placed without the under carriage?

ANSWERS:

1. See body of opinion.
2. No.
3. No.
4. No.
5. No.
6. No.
7. No.
8. Yes.
9. No.
10. Not necessarily.
11. No.
12. See body of opinion.
13. None.

1. Article 14, Section 17, Constitution of Arizona, provides in part:

. . . No foreign corporation, except insurers, shall have authority to do business in this State, until it shall have obtained from the Corporation Commission a

license to do business in the State, upon such terms as may be prescribed by law. . . .

Pursuant to the above quoted constitutional authority, Arizona's Legislature has prescribed conditions for the obtaining of a license from the Arizona Corporation Commission to do business in Arizona. A.R.S. §§ 10-481, et seq. A.R.S. § 10-482 provides as follows:

No foreign corporation shall transact business in this state until it has complied with the requirements of § 10-481, and every act done prior thereto is void.

If a foreign corporation, which engages either as a manufacturer or dealer of mobile homes, recreational vehicles or factory built buildings (or components thereof), desires to do business in Arizona, it must first obtain a license therefor from the Arizona Corporation Commission; otherwise, its acts are void.

Accordingly, although the answer to your question is "Yes, if the foreign corporation is doing business in Arizona" an important policy consideration arises: Should the Director of Building Codes make a determination whether or not a particular foreign corporation is "doing business" and withhold issuance of a license if he determines that a particular foreign corporation is "doing business" without the requisite authority from the Arizona Corporation Commission? For the reasons that follow, it is our opinion that the Director should not.

It is conceivable that a foreign corporation, which is qualified and required to obtain a license from the Director of the Division of Building Codes, is not "doing business" in Arizona. For example, out of state manufacturers, who manufacture for the purpose of sale within the State of Arizona, must be licensed (A.R.S. § 44-1704.A.12); but sales on consignment by foreign corporations to a dealer within Arizona of products from without the state would not constitute "doing business" within Arizona where the local merchant acts entirely in his own behalf in making sales or contracts for the sale of such goods. Reed v. Real Detective Publishing Co., Inc., 63 Ariz. 294, 162 P.2d 133 (1945).

The legal effect of an act performed by a foreign corporation, which is "doing business" within the State of Arizona without a license issued by the Corporation Commission, is that the act is void. A.R.S. § 10-482. For its own protection, a foreign corporation--if in doubt as to whether or not it is "doing business" within the State of Arizona--is best advised to secure either a license from the Arizona Corporation Commission or an opinion from an attorney admitted to practice in Arizona that the foreign corporation is not "doing business".

However, it is unreasonable to assume that Arizona's Legislature expected the Director of the Division of Building Codes to make that legal determination with respect to each foreign corporation.

2. A.R.S. § 44-1701.7 provides in part:

"Mobile home" or "mobile housing" means a movable or portable dwelling over thirty-two feet in length or over eight feet wide, constructed to be towed on its own chassis and designed so as to be installed with or without a permanent foundation for human occupancy as a residence . . . as well as a portable dwelling. . . . (Emphasis added.)

As can be seen from the emphasized portion of the above quoted statute, a mobile home as contemplated by Chapter 143, Laws of 1972, must be used for human occupancy as a residence. It is our opinion that a schoolroom or office is not a residence as that term is used in the above quoted statute.

3. Chapter 143, Laws of 1972, is silent with regard to the licensing of repairmen and, therefore, it is our opinion that such repairmen are not required to be licensed by the Division of Building Codes.

4. A.R.S. § 44-1713.B provides:

B. Units or components manufactured prior to the effective date of this article shall be exempt from the standards adopted by the director pursuant to this article, and rules, regulations and standards issued pursuant to this article.

The above statute clearly exempts mobile homes manufactured prior to May 19, 1972.

5. A.R.S. § 44-1701.1 provides:

"Component" means prefabricated wall, floor, ceiling or roof panels or similar units of construction or any combination of such units.

It is our opinion that the definition set forth above is limited to the class of items specifically set forth in that statute, and cannot be expanded to include appliances as mentioned in the question.

6. Chapter 143 is silent with regard to residency requirements, and does not appear to authorize the Director to enact rules and regulations setting forth such requirements.

7. Chapter 143 is silent with regard to the State of Arizona. It is our opinion that, had the Legislature intended to exclude the State of Arizona or one of its political subdivisions, that intent would have been expressed in specific language in the Act. The absence of such a provision leads us to the conclusion that the State of Arizona is not exempt from the provisions of Chapter 143.

8. A.R.S. § 44-1712.B provides:

For the purposes of this section, dealer means any person who engages in the business of selling recreational vehicles, mobile housing or factory built building units or components thereof.

Subsection A of the above quoted statute requires all persons who operate as a dealer within the State of Arizona to be licensed therefor. Because Chapter 143, and specifically A.R.S. § 44-1712, does not exclude or exempt from the dealer licensing requirements manufacturers which have been issued manufacturing licenses, it is our opinion that a dealer's license would also be required.

9. Chapter 143 is silent with regard to branch office licenses and, therefore, the Act does not prescribe such licenses.

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10. Due to the fact that the Board is merely an advisory board and that A.R.S. § 44-1708.B contemplates that members of the industry being regulated by the Division of Building Codes shall be equally represented on the Board, it is our opinion that a member need not disqualify himself from voting on a matter for the sole reason that it pertains to his area of business. However, as a caveat, we submit that a member should consult Attorney General Opinion No. 70-5 in order to determine whether he should disqualify himself regarding a particular item being voted upon in which he may be personally involved.

11. A.R.S. § 44-1701.4 speaks of commercial building, residential building, dwelling unit or habitable room; Subsection 7 speaks of human occupancy as a residence and portable dwelling; and Subsection 8 speaks of temporary living quarters. Therefore, it is our opinion that noncommercial storage buildings were not contemplated as being within the purview of Chapter 143.

12. Neither the existence nor the nonexistence of local codes or ordinances affects the jurisdiction of the Director under Chapter 143.

Respectfully submitted,



GARY K. NELSON
The Attorney General

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