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ARIZONA ATTORNEY GENERAL

August 30, 1949

Mit Simms, Member
Arizona Corporation Commission
The Capitol
Phoenix, Arizona

Dear Mr. Simms:

We have for acknowledgment your letter of June 2, 1949, asking the following questions:

"(1) Can a foreign corporation, not qualified in Arizona as a foreign corporation under our incorporating laws, be granted a permit to sell stock under the Investment Permit statute? If your answer is in the negative and a permit has been granted a foreign corporation under the State Investment Securities Act, what action should the Department take relating to the permit heretofore issued?

(2) Are foreign corporations holding permits to operate as an intrastate carrier in Arizona, issued by the Motor Vehicle Department, required to be qualified as a foreign corporation under the general incorporating laws of the state?

(3) Are foreign corporations holding permits to operate as an interstate carrier in Arizona, issued by the Motor Vehicle Department, required to be qualified as a foreign corporation

under the general incorporating laws of the state?

(4) Are foreign rating bureau corporations, qualified under Sec. 61-1205, added laws, 1947, Chapter 127, required to qualify as foreign corporations under the incorporating laws of the state (Sec. 53-801 as amended, Chapter 53, Laws of the regular session, 1949) or are rating bureaus insurance companies exempt from requirements to qualify under the incorporating laws of the state?"

We will not attempt to answer Question (1) at the present time as we understand it deals with a special situation, and we are awaiting additional facts concerning that situation.

In answer to Question (2) we are of the opinion that a foreign corporation holding a permit to operate as an intrastate carrier in Arizona should be required to qualify as a foreign corporation. A carrier which does intrastate business is "doing business" within the meaning of Section 53-801 ACA 1939, as amended. The very definition of "intrastate carrier" would, of necessity, imply the doing of business in the State of Arizona.

In answer to Question (3) we are of the opinion that a foreign corporation holding a permit to operate as an interstate carrier in Arizona cannot be required to qualify as a foreign corporation. If the business done by such foreign corporation is wholly interstate in character, the Commission has no jurisdiction to require the corporation to qualify.

"It is well settled that constitutional and statutory provisions regulating the doing of business in the state by foreign corporations do not apply to transactions in interstate commerce and that

such transactions cannot be considered as doing business within the meaning of such provisions." (Fletcher's Corp., Vol. 17, p. 503.)

This is also true even though the interstate carrier performs certain acts within the state incidental to its interstate business, "Nor can foreign corporations be regarded as doing business within the state when it performs acts therein incidental to interstate business". (Ibid., Fletcher's Corp.) An interstate carrier could only be required to qualify as a foreign corporation if it does a substantial local business, i. e., intrastate business, separate from and not merely incidental to its interstate business.

In answer to your Question (4) we are of the opinion that foreign rating bureau corporations are not required to qualify as foreign corporations under Section 53-801, supra, and this for the reason that the qualification of such corporations is provided for in Article 11 and 12 of Chapter 61 ACA 1939, as amended. The requirements of these sections in Article 11 and 12 are similar to those of Section 53-801, supra, and specifically provides the means for qualification of rating bureau organizations.

Section 61-1106, supra, provides: .

" * * * (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this state upon whom notices or orders of the commission or process affecting such rating organization may be served, and (4) a statement of its qualifications as a rating organization. * * * "

Section 61-1205, supra, provides:

" * * * (1) a copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its by-laws, rules and regulations governing the conduct of its business, (2) a list of its members and subscribers, (3) the name and address of a resident of this state upon whom notices or orders of the commission or process affecting such rating organization may be served, and (4) a statement of its qualifications as a rating organization.
* * * "

It is, therefore, our opinion that, since the insurance laws specifically provide for a qualification of these corporations, they should not be required to qualify again under Section 53-801, supra.

The answer to Question (1) will follow shortly. We trust the above satisfactorily answers your other questions.

Yours very truly,

FRED O. WILSON
Attorney General

JOSEPH PYLE RALSTON
Assistant Attorney General

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