

Corporations, Foreign—Stock Sale Of—Compliance With Corporation Laws and Blue Sky Law.

It is not necessary for a foreign corporation to comply with the laws of this state relating to corporations doing business within the state merely for the purpose of selling stock, but in order to do so, it must comply with the so-called "Blue Sky Law."

December 8, 1919.

Hon. George P. Porter,
State Auditor,
Helena, Montana.

Dear Sir:

I acknowledge receipt of your communication of recent date requesting my opinion on the following proposition:

"Recently tentative application has been made to this department for license under the 'Blue Sky' law by a Texas company

organized as a 'Joint Stock Association, Incorporated' under the provisions of the Texas law. This company proposes to sell \$100,000 worth of capital stock in Montana.

"This company has not complied with the general corporation laws of Montana nor filed with the Secretary of State. Is it necessary that a foreign corporation should comply with the laws pertaining to the admission of Montana corporations to the state in addition to requirements under the 'Blue Sky' law, or is the 'Blue Sky' law the entire law governing corporations which are transacting in Montana only the business of selling their stock?" Section II of Article XV of our Constitution provides:

"No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same upon whom process may be served. And no company or corporation formed under the laws of any other country, state or territory, shall have, or be allowed to exercise, or enjoy within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of the state." Section 17 of Article XV of our Constitution provides:

"The term 'corporation,' as used in this article, shall be held and construed to include all associations and joint stock companies, having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all courts in like cases as natural persons, subject to such regulations and conditions as may be prescribed by law."

Section 4413, Revised Codes, provides that "all foreign corporations or joint stock companies * * * shall before *doing business* within this state, file in the office of the Secretary of State, and in the office of the county clerk of the county wherein they intend to carry on business, a duly authenticated copy of their charter or articles of incorporation, etc."

Section 4413 provides that foreign corporations, etc., shall comply with all the requirements of said Section 4413 before authorized to do business in this state, and it is my opinion that these statutes relate to the usual business done by a corporation or joint stock company and by its agents, and does not refer to obtaining subscription to its stock. The ordinary business, for instance, done by the association in question here, is the drilling, prospecting for, and the production of oil. The obtaining of subscriptions is an act preliminary to the commencement of its business.

A foreign corporation's maintenance of an office for the registration of transfers of shares of stock only and for meetings of directors, together with the keeping of a bank account in the state, is not "doing business" in this state.

Honeyman v. Colo. Fuel & Iron Co. 133 Fed. 96, 99.

"Doing business," within the meaning of Act of June 17, 1852, requiring agents of foreign corporations to file a power of attorney, etc., in the county where they prepare to do business, has no application to the soliciting of subscriptions to the capital stock of a foreign corporation.

Payton v. Withers (U. S.) 19 Fed. Cas. 29-30.

The shipping of beer into the state by a foreign corporation and selling the same to a distributing agent did not constitute a carrying on of business in the state within the meaning of Section 4413, Revised Codes, relating to the steps necessary for such a corporation before it can carry on business in Montana.

Urhlein v. Coplice Coml. Co., 39 Mont. 327, 102 Pac. 564.

The following authorities may be advantageously consulted concerning the questions herein above considered:

Jameson v. Simonds Saw. Co., 84 Pac. 289 (Calif.);

Miller v. Williams, 59 Pac. 740 (Colo.);

Galena M. & Smelting Co. v. Frazier, 20 Pa. Sup. Ct. 394;

Phila. & Gulf S. S. Co. v. Clark, 59 Pac. Sup. Ct. 415;

Payson v. Withers, 5 Biss. (U. S.) 269;

Bartlett v. Chouteau Ins. Co., 18 Kans. 369;

Wildwood Pavilion Co. v. Hamilton, 15 Pac. Supr. Ct. 389.

It follows from the foregoing that the act of selling shares of the capital stock of a corporation or joint stock association does not constitute doing business here in such a sense as to bring the corporation or association within the provisions of Section 4413, Revised Codes, requiring such corporations, joint stock companies, or associations to do certain things before they are authorized to take subscriptions for or sell their capital stock, and hence it is not necessary for such foreign companies in order to sell their capital stock in this state, to comply with said Section 4413 in addition to complying to the provisions of our "Blue Sky Law."

Respectfully,

S. C. FORD,

Attorney General.