

Foreign Corporations—Domestic Corporations—Secretary of State—Articles of Incorporation.

Where a domestic corporation manufactures products for a foreign corporation and fills the orders of the foreign corporation from the products manufactured in Montana and kept in store by the domestic corporation for the purpose of filling the orders of the foreign corporation, both corporations are engaged in doing business in Montana, and the foreign corporation must file a copy of its charter in the office of the secretary of state.

W. E. Harmon, Esq.,
Secretary of State,
Helena, Montana.

February 28, 1930.

My dear Mr. Harmon:

You have requested my opinion whether the Old Fashioned Millers, Incorporated, a Minnesota corporation, which owns the controlling stock in the Harlem Milling Company, a Montana corporation, is doing business in this State as contemplated by Section 6651, R.C.M. 1921.

In this case the facts are as follows: The Old Fashioned Millers, Incorporated, buys wheat from the Montana grain dealers at a number of points in Montana, including the Harlem Milling Company, of which it owns the controlling stock. Some of this wheat is ground at Harlem for the company, and some in St. Paul. The wheat flour is sold to the Montana trade, but none of it is sold by the Harlem Milling Company, all being sold by and for the account of the Old Fashioned Millers, Incorporated, of St. Paul.

The fact that the corporation in question owns the controlling interest in the Harlem Milling Company does not have any bearing upon the question presented as the two are distinct and separate corporations, and as long as the business done in Montana is carried on by the Harlem Milling Company in its own name this fact need not be taken into consideration.

Section 6651, *supra*, provides in part as follows:

“All foreign corporations or joint stock companies, except foreign insurance companies, and corporations otherwise provided for, organized under the laws of any state or of the United States, or of any foreign government, 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, and also a statement, verified by oath of the president and secretary of such corporation, and attested by a majority of its board of directors,
* * * .”

From the foregoing provisions it appears that the doing of business as contemplated by this statute means the conducting of a place of business within the State. If the statute could be held to mean that any corporation obtaining business from the State was to be considered as doing business in Montana, then the statute would be void as interfering with interstate commerce.

Since all the marketing of its product appears to be carried on from St. Paul, the only question remaining is whether the manufacturing of the product by the Harlem Milling Company for the Minnesota corporation constitutes the doing of business in this State. Since the flour manufactured by the Harlem Milling Company is sold by and for the account of the Old Fashioned Millers, this would constitute the doing of business in Montana, for the reason that this flour is not a part of interstate commerce and places the Old Fashioned Millers in the position of maintaining a storage house in Montana from which the trade of the State is supplied, and it is my opinion that this does constitute the doing of business in the State within the meaning of the statute.

Very truly yours,
L. A. FOOT,
Attorney General.