

ness, 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, showing:

"1. The name of such corporation and the location of its principal office or place of business without this State; and the location of the place of business or principal office within this State;

"2. The names and residences of the officers, trustees, or directors;

"3. The amount of capital stock.

"4. The amount of capital stock invested in the State of Montana."

In the case of *General Fire Extinguisher Co. v. Northwestern Auto Supply Co.*, 65 Mont. 371, the record disclosed that the plaintiff sent its agent to Montana to secure a contract with the defendant for the installation of plaintiff's automatic sprinklers and fire-extinguishing apparatus in defendant's building at Billings; that such contract was thereupon entered into; that the sprinklers and apparatus were fabricated at Warren, Ohio; Chicago, Illinois, and Auburn and Providence, Rhode Island; that they were shipped to Billings, where they were installed in said building under the direction of a trained expert in plaintiff's employ; that in connection with the work plaintiff employed certain necessary local labor and purchased in Billings many articles, such as nails and strips of tin. The plaintiff never established any office or place of business in Montana and did not manufacture any of its apparatus or materials within the State. The plaintiff equipped one other building in Montana with fire-extinguishing apparatus shortly before the job done by it for the defendant, in the same manner and under similar circumstances so far as process of installation and place of securing necessary incidental labor and materials were concerned. The court held that the plaintiff, in doing what it did, as shown by the record, was not doing business in the State of Montana within the meaning of the statute, and among other things said: "We entertain the view that isolated transactions whereby a foreign cor-

Opinion No. 193.

Corporations — Foreign Corporations "Doing Business Within This State" Defined — Bids Do Not Constitute "Doing Business."

HELD: A foreign corporation which bids for the construction of any public work in the State of Montana is not thereby doing business within the State and is not obliged to comply with the provisions of R. C. M. 6651.

October 30, 1935.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

In your letter of October 9, you ask us whether or not in our opinion a foreign corporation which tenders a bid for the construction of any public work in the State of Montana is thereby doing business within the State in the sense in which the term is used in Section 6651, Revised Codes 1921.

That section reads 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 busi-

poration sells goods or other manufactured products on sample or specifications, the same being fabricated in another state and shipped into this state by such corporation for use or installation, does not constitute the doing of business in this state, within contemplation of the statute. Were the law given a contrary construction, it is easy to see the far-reaching and absurd consequences which would result. Transactions of this character were never in legislative contemplation. It is our opinion that the two isolated transactions of the plaintiff in this case, under the facts recited, do not constitute the 'doing of business' in this state within the intent of the statute." (State v. District Court, 98 Mont. 278; 17 Fletcher's Cyclopedia Corporations, Sec. 8466, p. 470.)

In the case of *Odell v. City of New York*, 200 N. Y. S. 705, aff. 144 N. E. 917, the appellate division of the Supreme Court held in effect that a foreign corporation was not doing business in the State of New York merely because it entered into a contract with the City of New York to construct an aqueduct to supply the latter with water. (*Hanley Co. v. Bradley*, 259 N. Y. S. 278.)

The general rule is that a foreign corporation which has done only those acts within a state which are preliminary to the doing of the business for which it was incorporated, is not thereby doing business within such state. Thus a foreign corporation does not come under the provisions of a law regulating the doing of business in a state by securing the lease of premises therein in order that it might thereafter engage in its chartered business, or by agreeing with the owner to purchase timber situated therein, with the view of subsequently engaging in the business for which it was organized, or by making bids for public or private work therein or for supplying materials or articles to residents thereof, or by entering into a contract to perform such work, or by giving a bond to secure performance of such contract. (17 Fletcher's Cyclopedia Corporations, Sec. 8468, p. 475; 14a Corpus Juris, Sec. 3986, p. 1279; *Automotive Material Co. v. American Stand-*

ard M. P. Corp., 158 N. E. 698; *Philip A. Ryan Lumber Co. v. Ball*, 177 S. W. 226.)

Under the authorities generally, therefore, only one reasonable conclusion can be reached, namely, that a foreign corporation which bids for the construction of any public work in the State of Montana is not thereby doing business within the State and is not obliged to comply with the provisions of Section 6651, Revised Codes 1921.

Indeed, without the aid of authority, we should be constrained to reach the same conclusion by reason of the language of Section 6654, Revised Codes 1921, which is as follows: "Every corporation enumerated in Section 6651 of this code shall annually and within two months from the first day of April of each year make a report, which shall be in the same form and shall contain the same information as required in the statements mentioned in said section, and, in addition, shall contain the following information:

"1. The gross amount of its business in the State of Montana for the preceding year.

"2. The amount of money actually expended in transacting its business in the State of Montana for the preceding year.

"3. The net profits on its business transacted in Montana for the preceding year.

"Said report shall be filed in the office of the county clerk of the county wherein the principal business of such corporation is carried on and the duplicate thereof in the office of the Secretary of State." How can a foreign corporation whose bid is not accepted make the report required by this section?

Furthermore, we do not think that Section 6651 is in any way affected by Chapter 178, Laws of 1935, which defines a "public contractor" as any person, firm, association or corporation that "submits a proposal to or enters into a contract with the State of Montana, or with any board, commission or department thereof, or with an Board of County Commissioners, or with any City or Town Council, or with any agency of any

thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for the construction or reconstruction of any public work when the contract cost, value or price thereof exceeds the sum of One Thousand Dollars (\$1,000.00)," and makes it unlawful for any such person, firm, association or corporation to engage in the business or act in the capacity of public contractor, as so defined, within the State of Montana without obtaining a license therefor from the State Board of Equalization. It is evident that Section 6651 relates to one thing and Chapter 178 to another thing. They are separate and distinct in their purpose and deal with different subject matters.

The former requires a foreign corporation, before engaging in business in this State, to file in the office of the Secretary of State, and in the office of the county clerk of the county wherein it intends to carry on business, an authenticated copy of its charter, or articles of incorporation, while the latter requires every person, firm, association or corporation, whether foreign or domestic, to secure a license as a public contractor from the State Board of Equalization before bidding for the construction of any public work in the State having a value in excess of one thousand dollars. The term "doing business" used in Section 6651 cannot in reason include the status of public contractor which results from making a proposal to some public officer or board for the construction of some public work or another in the State of a value above one thousand dollars. (17 Fletcher's Cyclopaedia Corporations, Sec. 8465, p. 468. See, also, 59 C. J. 978; Atlantic Cleaners & Dyers v. United States, 286 U. S. 427; State v. Desmarais, 123 Atl. 582; Board of Education v. Bryner, 192 Pac. 627; In re Segregation of School Dist., 200 Pac. 138; Boucher v. Lizotte, 161 Atl. 213; City of Enderlin v. Pontiac Township, 242 N. W. 117; California Packing Corp. v. Sun-Maid Raisin Growers, 64 Fed. (2d) 370; 2 Lewis' Sutherland on Statutory Construction, Secs. 367, 602.).

(Note: What constitutes "doing business"? See, Vol. 13, Opinions of Attorney General, p. 243; Vol. 13, p. 283.)