

Opinion No. 54.

**Secretary of State — Corporations,
Foreign, Contracts with United
States—Filing Annual Report.**

HELD: Neither Sec. 6651, R. C. M.
1921, requiring certain foreign cor-

porations desiring to do business in the state to file copy of charter and statement with the secretary of state, nor Chapter 169, Laws of 1931, requiring such corporations to pay certain fees when filing their charter and requiring the filing of an annual statement with the secretary of state, contemplate the regulation of foreign corporations that are exclusively engaged in employment by the United States Government.

March 6, 1935.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

In your letter of March 1, you have asked for our opinion upon the following question: "Is a foreign corporation, exclusively engaged in the performance of construction contracts for the United States Government in this state, required to file an annual report and otherwise comply with Chapter 169, Laws of Montana, 1931?"

Section 6651, R. C. M. 1921, requires certain foreign corporations desiring to do business in this state, to file a copy of their charter and a statement with the secretary of state. Chapter 169, supra, requires such corporations to pay certain fees when filing their charters and to file an annual statement with the secretary of state "stating the proportion of its capital stock represented in the State of Montana by its property located and business transacted therein during the preceding year" and in some instances to pay an additional fee upon the filing of such annual statement.

It is our opinion that neither Section 6651 nor Chapter 169, cited above, contemplate the regulation of corporations that are exclusively engaged in employment by the United States Government.

The general rule of law applicable is stated in 14a C. J. 1256: "So every corporation of any state in the employ of the United States has the right to exercise the necessary corporate powers and to transact the business requisite to discharge the duties of that employment in every other state in the Union without permission grant-

ed, or conditions imposed by the latter."

And again in Thompson on Corporations, 3rd Edition, Volume 8, Section 6592: "Another exception to the general rule of unlimited state control over foreign corporations occurs where the corporation is engaged in the business of the general government. Such corporations to the extent of the federal business, may do such business in other states without obtaining a license or other permit, and even against the prohibition of the state. A state may lawfully prohibit foreign corporations other than those engaged in interstate or foreign commerce or which are employed by the federal government from transacting business in the state without first obtaining a permit."

Mr. Justice Bradley's illustration of the rule in *Stockton v. Baltimore & New York Railroad Company*, 32 Fed. Rep. 9, that "if Congress should employ a corporation of shipbuilders to construct a man of war, they would have the right to purchase the necessary timber and iron in any state of the Union," is often quoted with approval. Mr. Justice Field said, in quoting the illustration, "and we may add, without the permission and against the prohibition of the state." (*Pembina Mining Company v. Pennsylvania*, 125 U. S. 181, 31 L. Ed. 650, 8 Sup. Ct. 737.)

Of course, the above rule, which is an exception, does not extend to foreign corporations doing business in this state for two or more customers, one of whom is the federal government and others who are private individuals. (*State v. Western Union Telegraph Company*, 75 Kan. 609, 90 Pac. 299.) Their situation is similar to foreign corporations engaged both in interstate and intrastate commerce. (*Chicago, Milwaukee, St. Paul & Pacific Rd. Co. v. Harmon*, 89 Mont. 1, 295 Pac. 762; also 14a C. J. 1248.)

From what has been said above, however, your question must be answered in the negative.