

Section 11 of Article XV of the Constitution of the State of Montana reads as follows:

“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.”

From this constitutional provision, we have a right to infer that a foreign corporation may have the right to make application for admission to the State of Montana for the purpose of doing business in our state. The granting or refusal to grant such admission to the foreign corporation as aforesaid rests with the State of Montana. The State does not seek to compel the foreign corporation to engage in business here, and the matter of granting this privilege is, therefore, a matter of grace on the part of the State, and not a matter of right on the part of the corporation. If, as, and when, the State of Montana assents to the admission of the foreign corporation into the State to do business, such assent may be granted upon such terms and conditions as the State may think proper to impose. (Paul v. Virginia, 8 Wall. 168, 19 L. Ed. 357.) We may exclude the foreign corporation entirely; we may restrict its business to particular localities; or we may exact such securities for the performance of its contracts with our citizens as in our judgment will best promote the public interest. Accordingly, we compel the payment of fees to enter the State, Section 145.1, R. C. M., 1935; we levy a corporation license tax, Section 2296, R. C. M.; we set out the requirements necessary to become admitted into our State, Section 6651, R. C. M.; and we require of the foreign corporation the filing of an annual statement, Section 6654, R. C. M., the compliance with all of which is necessary, that the foreign corporation may exercise the rights and privileges, receive the protection and service which the State of Montana

Opinion No. 223.

Corporations—Annual Statements.

HELD: Foreign corporations, having become admitted to do business in this state, must file annual statement, even though inactive, in order to maintain legal status in the state.

December 30, 1937.

Honorable Sam W. Mitchell
Secretary of State
State Capitol Building
Helena, Montana

My dear Mr. Mitchell:

Your inquiry, in substance, is as follows:

A foreign corporation having qualified to do business in the State of Montana, has been delinquent for the past several years in the filing of its Annual Statement. The corporation contends that it has been inactive in the State of Montana during these years and, therefore, did not see that the filing of Annual Statements was necessary.

affords, and, upon being licensed to do business in Montana, such foreign corporation becomes subject to the liabilities and restrictions then imposed upon Montana corporations of like character.

State v. Alderson, 49 Mont. 29;

Daily v. Marshall, et al., 47 Mont. 377, 398, 399;

Mieyr v. Federal Surety Company of Davenport, et al., 94 Mont. 508, 521;

Ford Motor Co., et al., v. Linnane, et al., 102 Mont. 325, 338;

First National Bank of Missoula v. Cottonwood Land Co., et al., 51 Mont. 544, 549.

The particular section of our code applying directly to your query is Section 6654, R. C. M. 1935, and reads 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."

Your query to this office suggests that the particular corporation has been inactive for a period of years. In response we might say that this does not excuse the corporation from the filing of its annual statements and from the form of the statement, as above set out, it can be readily seen that the report as per statement taken from the books of the corporation

would serve as the best evidence of inactivity.

We might say further that under Section 2296, R. C. M. 1935, every corporation subject to a license tax under the said section must pay to the State of Montana a license tax dependent on the business done in the State subject to specified deductions, and the annual statement serves to show what, if any, taxes might be due from such corporation. In construing Section 2296 aforesaid our Court said in Cottonwood Coal Co. v. Junod, 73 Mont. 392, 399:

"In the statute under consideration the activity of the corporation is not made the measure of the license fee, except as such activity manifests itself in the production of income."

Annual statements shall be filed for each and every year of the corporate existence in the State of Montana.