

## Opinion No. 58-34

February 18, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

**TO:** Honorable Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

### QUESTION

#### QUESTIONS

1. Does the Itinerant Vendor License Law, being § 60-2-1 to § 60-2-24, N.M.S.A., 1953 Compilation, apply to New Mexico corporations or duly authorized agents thereof?
2. Does the said law apply to foreign corporations qualified to do business in this state or to the duly authorized agents thereof?
3. Is the Secretary of State charged with the responsibility for the enforcement of said law?

#### CONCLUSIONS

1. No.
2. No.
3. No.

### OPINION

#### ANALYSIS

An itinerant vendor for the purpose of the itinerant vendor license law, being § 60-2-1 to § 60-2-24, of the New Mexico Statutes Annotated, 1953 Compilation, is defined in § 60-2-1, as follows:

"The term 'itinerant vendor,' for the purpose of this article shall mean and include any person, either principal or agent, **who engages in either a temporary or transient business in this state**, either in one locality or in traveling about the country, or from place to place, selling manufactured goods, jewelry, wares or merchandise, and it shall include peddlers and hawkers, and also those who for the purpose of carrying on their temporary or transient business, hire, lease or occupy a building, structures, tent, car, vehicle, store room or place of any kind, for the exhibition and sale of any manufactured goods, jewelry, wares or merchandise." (Emphasis supplied)

A reading of the above statute clearly indicates that if a person or corporation is engaged in a business of a permanent nature in this state, such person or corporation would be exempt from the provisions found in § 60-2-1 to § 60-2-24. Both domestic and foreign corporations which have qualified to do business in this state are required by statute to list their principal place of business in the state and designate the name of their agent therein, and in charge thereof, upon whom process against the corporation may be served. In view of this requirement that a permanent place of business be maintained within the state, it is the opinion of this office that domestic corporations as well as foreign corporations which are duly qualified to do business in New Mexico do not fall within the definition of an itinerant vendor and are thus exempt from the statutory provisions relating thereto.

We are further prompted to this conclusion by an analysis of the intent of the legislature in enacting the itinerant vendor licensing provisions. A careful reading of the statutes pertaining thereto clearly reveals that they were enacted to protect the general public from fraud and deceit which might be practiced upon it by hawkers and peddlers traveling about the state selling their goods and wares. Clearly, domestic corporations in good standing in the state, and foreign corporations which have duly qualified to do business in the state are not such persons as the above provisions were intended to reach. In the event of a legal controversy arising out of a sale of merchandise by an agent of a corporation duly authorized to transact business in this state, said corporation would at all times be present within the state for service of process. The absence of this convenience to an aggrieved party in the case of an itinerant vendor conducting a temporary business in the state was certainly a consideration giving rise to the enactment of the provision in question. We, therefore, conclude that the provisions found in our general business corporation statutes afford the general public sufficient protection in this regard. It therefore follows that questions 1 and 2 must be answered in the negative.

Turning now to the third question posed in your inquiry, § 60-2-5, N.M.S.A., 1953 Compilation, sets out the duties of the Secretary of State in regard to the issuance of a state license to an itinerant vendor and provides as follows:

"Upon the said certificates and oath provided for in the preceding section being filed in the office of the secretary of state with a written application under oath made by the applicant, stating the names and residence of the owners or parties in whose interest the said business of an 'itinerant vendor' is to be conducted, the payment to the secretary of state of the license of twenty-five dollars (\$ 25.00), the secretary of state shall issue to the applicant a state license authorizing him to do business as an 'itinerant vendor' within the state of New Mexico for the term of one (1) year from the date of the issue of said state license, conditioned upon the licensee therein named, procuring business as an 'itinerant vendor' and complying with all the provisions of this article, and all laws of the state of New Mexico, which license shall be for not less than one (1) year."

The above statute is clear and unambiguous and in our opinion does not impose any enforcement responsibility on the Secretary of State. It simply directs the Secretary of State to issue a state license upon the fulfillment by the applicant of certain requirements. It further provides that the validity of any state license issued under said section will be conditioned upon the licensee procuring a proper county license from such county in which he may do any business as an itinerant vendor, and upon compliance with all the provisions of § 60-2-1 to § 60-2-24, supra.