

Opinion No. 62-90

July 18, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General George Richard Schmitt,
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TO: Mr. Rufus C. Little, Registrar, New Mexico State Contractors' License Board, P. O.
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QUESTION

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1. Would an "Agent for Service of Process" designated by a foreign corporation in its Certificate of Incorporation, filed with the State Corporation Commission, meet the requirement of maintaining an office in the State for at least 90 days prior to licensing, pursuant to § 67-16-5 (C) of the Contractors' Licensing Act?
2. If a foreign corporation allows its license to lapse for non - payment beyond the period of renewal, must the foreign corporation file an application for a new license pursuant to § 67-16-5, N.M.S.A., 1953 Compilation and would the 90 day requirement set out in § 67-16-5 (C) be applicable?

CONCLUSIONS

1. No. See Analysis.
2. See Analysis.

OPINION

ANALYSIS

1. Your first question involves an interpretation of Section 67-16-5 (C), N.M.S.A., 1953 Compilation which is a part of the Contractors' Licensing Act, and which is set out as follows:

" No license shall be issued to a foreign corporation which has not complied with the state laws requiring qualifications to do business in the state, nor to any foreign corporation which has not maintained an office in the state for at least ninety (90) days preceding the making of an application for a license, and no license shall be issued to any individual, firm, partnership, or company, that is not a resident of the state for ninety (90) days, unless such person, firm, partnership, or company, has maintained an office in the state for a least ninety (90) days preceding the filing of an application for a license; Provided, however, that the board may issue a

license at any regular or special meeting, to specialty contractors, without regard to residence qualifications, whenever a showing is made that there are less than ten (10) contractors operating in the state licensed to do the type of **specialty contracting** involved in a particular application." (Emphasis supplied)

A plain reading of the statute discloses that a foreign corporation must meet two conditions which are prerequisites for an application for a license. First, the foreign corporation must qualify to do business in the State, and second, it must maintain an office in the State for at least 90 days prior to filing with the Contractors' License Board for a license. In order for a foreign corporation to meet the qualification for doing business in the State it must be admitted to business pursuant to Section 51-10-4, N.M.S.A., 1953 Compilation which includes the appointment of an agent for service of process to be designated in its Certificate filed with the Corporation Commission.

Therefore, the designation of a statutory agent is an actual part of the first requirement to licensing which is to do business pursuant to the state laws.

Since this is a part of and included in the first requirement, it is obvious that the designation of an agent **solely** for the purposes of service does not of itself comply with or satisfy the second condition of maintaining an office in the state for 90 days prior to licensing.

This conclusion is further supported by the ordinary and generally accepted meaning of the word "office" which is synonymous with a "place of business". **Jones v. Bd. of Adj.** 119 Colo. 420, 204 P. 2d. 560, 564 (1949). An office is a place for the regular transaction of business, **Bradley v. Certeique Mining and Dredging Co.**, 157 NYS 275, 276, 93 Misc. 519 (1960), and is universally regarded as meaning a room or building in which a person transacts his business or carries on his stated occupation. **Red Acres Imp. Club v. Burkhalter**, 193 Tenn. 79, 241 S.W. 2d. 921, 925 (1951).

Certainly in this instance the hiring of an agent by a foreign corporation for the sole purpose of receiving and forwarding a Summons and Complaint to the Home Office of the corporation located in another State does not fall within any of the above cited generally accepted definitions pertaining to maintaining of an office. An occasional or isolated act of this type by an agent of a foreign corporation is obviously not a part of the continuous, usual and ordinary business of the corporation which, in this case, would be building or construction.

In light of the above analysis, it is the opinion of this office that a foreign corporation must do something in addition to merely designating a statutory agent for service in order to meet the requirement of "maintaining an office" pursuant to Section 67-16-5 (C), supra. There must also be some actual showing by the foreign corporation that the statutory agent or any other agent or employee of the foreign corporation is performing or preparing to perform at least some function in direct connection with and incidental to the ordinary business of the corporation so as to constitute an "office" in accordance with the statute and cases cited above.

In conclusion, references should be made to **Specialty Contractors** who are excepted from residence qualifications under Section 67-16-5 (C) Supra. Specialty contracting classification is within the rule making powers of the Contractors' Licensing Board.

2. Your second question involves an interpretation of Section 67-16-7, N.M.S.A., 1953 Compilation, set out in part as follows:

"Expiration of licenses. -- All licenses issued under the provisions of this act (67-16-1 to 67-16-19) shall elapse and expire on June thirtieth of each year. Applications for renewal of a current license accompanied by the same fees hereinabove provided for an original license, before the expiration date, shall authorize operation as a contractor by such licensee until actual issuance of such renewal license for the ensuing fiscal year. All applications for renewal of licenses shall be filed with the registrar not later than July thirtieth of each year; otherwise such licenses shall be ipso facto suspended, and shall be renewable only on the payment of a fee of twice the amount of the regular license fee of such contractor, and unless so renewed shall remain suspended during the remainder of the fiscal year. After a license has been suspended, as in this section provided, for a period of one (1) or more fiscal years, a new application for license must be made and a new license issued in accordance with the provisions of sec. 5 (67-16-5) of this act."

It is apparent that the statute involves two distinct situations resulting from a suspension of license for failure to renew within the prescribed period. If the license has been suspended for less than one year, the applicant may renew the license upon payment of a fee of twice the amount of the regular license fee, even though the applicant might be a foreign corporation. If the license has been suspended for more than one year, the applicant must apply for a new license and it must be issued pursuant to Section 67-16-5, N.M.S.A., 1953 Compilation of the Contractors' Licensing Act. In this latter instance, if the foreign corporation is no longer qualified to do business under the State Corporation laws, and if it no longer maintains an office in the State prior to the application for a new license, the requirements in Section 67-16-5 (C), supra, discussed in the first question of the opinion, are obviously applicable.