

Opinion No. 15-1557

June 16, 1915

BY: FRANK W. CLANCY, Attorney General

TO: State Corporation Commission, Santa Fe, New Mexico.

The mere sale of stock in a foreign corporation is not doing business in the state within the meaning of our statutes. Service of process on resident director of a foreign corporation is good.

OPINION

{*140} I have to acknowledge receipt of your letter of the 16th inst. enclosing another from Messrs. Powell & Neblett of Silver City with reference to the Bankers' Trust Company of Dallas, Texas, which you say is referred to me for opinion as to the right of this corporation to sell its stock in New Mexico. Messrs. Powell & Neblett call attention to Section 102 of Chapter 79 of the Laws of 1905, and quoted the first part of that section as follows:

"Every foreign corporation except banking, insurance and railroad corporations before transacting any business in this state shall file in the office of the State Corporation Commission a copy of its charter or certificate of incorporation certified by the proper authority of the territory, state or country of its creation."

Their letter then asks whether the exception stated in the above quotation applies to trust companies of the character of the Bankers' Trust Company of Dallas.

It is difficult to answer this question without more definite knowledge of the character of that Bankers' Trust Company. If it is a banking corporation, there seems to be no provision of law in New Mexico providing any way by which it can do business in New Mexico. As far as I am aware, there is nothing in our statutes authorizing foreign banking corporations to do business in New Mexico. Section 100 of the same act, however, does make it lawful for any foreign corporation whatsoever to purchase and convey and use real estate in New Mexico, but this does not apply to the doing of business generally.

Messrs. Powell & Neblett further desire to know whether or not it is possible to get service of process upon this trust company within the state if it has not complied with the provisions with regard to foreign corporations doing business in New Mexico, adding that they do not know whether the company has ever transacted any business here other than the sale of stock, although several of their directors are residents of this state.

By Section 94 of the same act already referred to, it is provided that in all personal suits or actions against any foreign corporation, process may be served upon any officer, directors or agent of such corporation, and while a part of this section seems to indicate that it refers to foreign corporations having a place of business in New Mexico, yet in a case where it has no such place of business, but does have directors resident in the state, I believe that service of process upon such director would be good.

I am of opinion that the mere sale of stock in New Mexico is not a doing of business within the meaning of our statutes, but if *{*141}* it can be held that that is a transacting of business in New Mexico, then under Section 103 of the same act the corporation is forbidden to maintain any action in New Mexico upon any contract made by it in New Mexico. I have no doubt that such a corporation could maintain an action against a person in New Mexico upon a contract made outside of New Mexico.

I return the letter from Messrs. Powell & Neblett, herewith.