

Opinion No. 43-4424

December 7, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable J. D. Hannah, State Auditor, Santa Fe, New Mexico

We are in receipt of your letter of December 1, 1943, in which you ask our opinion as to whether or not you are justified in approving vouchers making payment for merchandise purchased from a corporation not authorized to do business in New Mexico, as provided by Section 54-804 of the 1941 Compilation.

Nowhere in our statutes is it provided that contracts made by a non-complying foreign corporation are void. (See *Niblack v. Seaberg Hotel Company*, 4 N.M. 281.) The only effect of failure to comply is that such corporation may subject itself to the penalty provided by Section 54-807, and further that such corporation cannot maintain an action in courts of this state upon any contract made by it in this state; however, it can maintain an action on the contract made in another state. (See *Alexander Film Company v. Pierce*, 46 N.M. 110; also *Abner Manufacturing Company v. McLaughlin*, 41 N.M. 97). The court held, in the latter case, that a foreign corporation was not transacting business in this state but was, rather, engaged in interstate commerce where it obtained orders in this state through its agents, took notes for purchase price, forwarded contracts and notes to company outside of the state, where the notes were accepted and shipment made. Further, that the doing of a single act of business by a foreign corporation does not constitute transacting business in this state. (See *Goode v. Colorado Investment Company*, 16 N.M. 461. *Vermont Farm Machine Company v. Ash*, 26 N.M. 647; *Young v. Kidder*, 33 N.M. 654).

In view of the foregoing, it is my opinion that you are justified in approving vouchers and making payment to such corporation, since the contract is legal and binding; but that if you refused to make such payment the corporation could not mandamus you to do so unless it (a) qualified to do business in New Mexico; (b) so handled its transaction that the contract was made in another state rather than New Mexico; (c) or, if the transaction involved was a single act of business and not part of a line of business carried on by the corporation in this state.

Trusting the foregoing sufficiently answers your inquiry, I am,

By ROBERT W. WARD,

Assistant Attorney General