

1974 WL 28107 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
June 10, 1974

***1 Re: Whether or not a bank under certain circumstances has to qualify to do business in this State.**

Honorable O. Frank Thornton
Secretary of State
Post Office Box 11350
Columbia, South Carolina 29211

Dear Mr. Thornton:

In your letter of April 10, 1974, you requested a clarification of the Opinion of February 8, 1974, in light of additional facts furnished by Harry M. Lightsey, Esquire, concerning the production of the matrixes.

As stated in the February 8 Opinion, the question as to whether a foreign corporation is doing business within a state depends on the facts and circumstances in each particular case and the purposes and language of the statute or statutes involved. Section 12-23.1, CODE OF LAWS OF SOUTH CAROLINA (1962) (Supp.) provides that a foreign corporation may not do business in this State unless it is authorized to do so or unless the corporation is engaged in activities which are, by statutory definition, not deemed to be 'doing business.' Under the given facts and assumptions stated in the February 8, 1974, Opinion, this Office felt that the bank's participation in the production of matrixes is to be 'an isolated transaction which is completed within a period of thirty days and which is not in the course of a series or number of repeated transactions.' See Section 12-23.1(b)(9).

The facts concerning the questioned transaction now appear to be that the bank trustee will hold title to the nuclear materials only long enough for the materials to be encased in a matrix, title to the matrix to be passed to the trustee and the trustee to pass both titles to the second company. Also,

The interest of the Trustee as assignee of the contracts between the company, on the one hand, and the South Carolina facility and the Atomic Energy Commission, on the other, is that of the holder of (1) title to certain special nuclear material in the possession of the South Carolina facility on the closing date and (2) the right to receive title (a) to special nuclear material in the future, as such material is withdrawn by the South Carolina facility from the AEC and (b) to the first core load and three replacement batches of nuclear fuel for a company plant outside of South Carolina, as delivered by the South Carolina facility. The first core Load and each of the three replacement batches will be delivered at distinctly different times by the South Carolina facility is not obligated to complete the fabrication of special nuclear material into assemblies within a thirty day period and even if it were, the bank could not safely rely upon that obligation where the process might, for any one of a variety of reasons, require a longer period of time.

Finally after talking with Mr. Harry N. Lightsey's office, it further appears that the instrument which the bank trustees will hold while the matrixes are being made contains evidence of indebtedness.

Section 12-23.1, CODE OF LAWS OF SOUTH CAROLINA (1962) (Supp.) provides:

***2** Without excluding other activities which may not constitute doing business in this State, a foreign corporation shall not be deemed to be doing business in this State, for purposes of this chapter, solely reason of carrying on in this State any one or more of the following activities:

....

Oreating or acquiring evidences of debt, mortgages, or lines on real or personal property.

Since a matrix can be classified as personal property and since the contract to pass title creates an evidence of debt on personally property, this office feels that pursuant to Section 12-23.1, the bank is not deemed to be doing business in this State.

Also, the bank's activities with this State are limited and tenuous. It does not appear that the bank is doing or transacting the sort of business for which it was incorporated, but rather is simply doing that which it has the authority to do. See 36 Am. Jur. 2d Foreign Corporation § 331 at 328-329 (1968). The Bank is not engaged in carrying on or transacting some substantial part of its ordinary or customary business. See 36 Am. Jur. 2d Foreign Corporation § 318 at 314-315 (1968).

For the above reasoning and relying upon the facts of Mr. Lightsey's letter, it is the opinion of this office that the bank is not doing business in South Carolina and, therefore, is not required to qualify with the Secretary of State.

Very truly yours,

H. Elizabeth Crum
Assistant Attorney General

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