

## Opinion No. 59-26

March 10, 1959

**BY:** FRANK B. ZINN, Attorney General

**TO:** State Corporation Commission Santa Fe, New Mexico. Attention: Mr. Alex Pacheco, Chief Clerk

Foreign corporation whose activities are sending nonresident agents into New Mexico to call on trailer dealers here, which agents solicit financing of trailers, the finance paper to be accepted or rejected by the corporation in offices outside New Mexico, is not required to qualify as a foreign corporation doing business in New Mexico.

### OPINION

{\*37} This is in reply to your recent request for an opinion on the following question:

A foreign corporation sends its nonresident agents to New Mexico, who call upon dealers of trailers or mobile homes here. The business of the corporation is to finance these trailers, and the agents solicit such business in New Mexico. The finance paper is then forwarded to offices of the corporation, located outside New Mexico where the proposed risks are evaluated. The paper may either be accepted or rejected by the corporation in the out-of-state offices. Does a foreign corporation under the above facts have to qualify as one doing business in New Mexico?

It is my opinion that under the facts as given qualification as a foreign corporation doing business in New Mexico could not be required.

The case of **Abner Mfg. Co. v. McLaughlin**, 41 N.M. 97, 64 P. 2d 387, is strongly analogous, although the facts there are not precisely the same as here. In the cited case, a foreign corporation sold lighting systems in New Mexico through agents who solicited orders. The orders, together with promissory notes, were signed by the proposed purchasers, which papers were then forwarded to the corporation's office outside of New Mexico. The credit standing was evaluated at this office, and the order accepted or rejected. If accepted, the merchandise was shipped to the purchaser. Our Court held this and similar transactions to be interstate commerce, and hence qualification as a foreign corporation doing business in New Mexico was not required under our statutes. A comprehensive review of the state's authority to levy taxes of various kinds either to regulate or for revenue upon interstate business was contained in the opinion of the Supreme Court of the United States in the case of **Northwestern States Portland Cement Co. v. Minnesota**, dated February 24, 1959. The case while approving taxing the income of the companies doing business by travelling solicitors, disapproved again the regulation or licensing of this type of interstate business.

In my opinion, a similar type transaction is present here. Consequently, it is not necessary that the foreign corporation involved be qualified to do business in this state.

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