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ARTICLE 4**FOREIGN CORPORATIONS****16-10-102. Admission of foreign corporation — Activities not considered transacting business in state.**

(1) No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Division of Corporations and Commercial Code. No foreign corporation shall be entitled to procure a certificate of authority under this act to transact in this state any business which a corporation organized under this act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this act contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this act, by reason of carrying on in this state any one or more of the following activities:

(a) maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;

(e) effecting sales through independent contractors;

(f) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(g) creating evidences of debt, mortgages or liens on real or personal property;

(h) securing or collecting debts or enforcing any rights in property securing the same;

(i) transacting any business in interstate commerce;

(j) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature; or

(k) acquiring, in transactions outside Utah or in interstate commerce, of conditional sale contracts or of debts secured by mortgages or liens on real or personal property in Utah, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights in property provided for in said conditional sale contracts or securing said debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by said conditional sales con-

tracts or the interest of the mortgagee or holder of the lien in said security, or any combination of such transactions.

History: L. 1961, ch. 28, § 102; 1963, ch. 19, § 8; 1984, ch. 66, § 117.

Amendment Notes. — The 1984 amendment substituted "Division of Corporations and Commercial Code" for "secretary of state" in Subsection (1).

Meaning of "this act". — The term "this act," referred to in this section, means Laws 1961, Chapter 28, which appears as §§ 16-10-1 to 16-10-51, 16-10-52 to 16-10-76, 16-10-77 to 16-10-88, and 16-10-89 to 16-10-141.

Cross-References. — Acts submitting non-residents to jurisdiction of state courts, § 78-27-24.

Application of penal code chapter to foreign corporations, § 76-10-711.

Fees of lieutenant governor, § 21-1-2.

Nonprofit Corporation and Co-operative Association Act, § 16-6-18 et seq.

Privileges of foreign corporations, Utah Const. Art. XII, Sec. 6.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.

Summons and service of process.

Transacting business in state.

Constitutionality.

State had the power to enact constitutional and statutory provisions prescribing terms and conditions for the transaction of business within the state by a foreign corporation. *A. Booth & Co. v. Weigand*, 30 Utah 135, 83 P. 734, 10 L.R.A. (n.s.) 693 (1906).

Summons and service of process.

Where a California architectural corporation designed and supervised construction of a Salt Lake City office building without being authorized to do business in Utah in compliance with this section and without appointing a resident agent to accept service of process, a summons served upon the secretary of state in an action against such foreign corporation was proper and gave jurisdiction to the Utah courts. The rule is that if a foreign corporation does business within a state and fails to comply with its laws, such failure will not redound to its advantage, but it will be deemed to have assented to the laws of the state and will be estopped to say it has not done what it should have in order to enter lawfully that state and there exert its corporate powers. *Prudential Fed. Sav. & Loan Ass'n v. William L. Pereira & Assocs.*, 16 Utah 2d 365, 401 P.2d 439 (1965).

Transacting business in state.

Bringing of suit by foreign corporation to secure its legal rights was not "doing business." *George R. Barse Live-Stock Comm'n Co. v. Range Valley Cattle Co.*, 16 Utah 59, 50 P. 630 (1897).

Instituting suits by foreign corporation in courts of Utah to enforce a contractual right was not "doing business" within the state.

Home Brewing Co. v. American Chem. & Ozokerite Co., 58 Utah 219, 198 P. 170 (1921).

Filing suit within the courts of the state by a foreign corporation to recover indebtedness or to enforce an obligation was not "doing business" within the meaning of the statute. *GMAC v. Lund*, 60 Utah 247, 208 P. 502 (1922).

The mere act of accepting an assignment of an obligation by a foreign corporation against a citizen of Utah was not doing business within the state. *GMAC v. Lund*, 60 Utah 247, 208 P. 502 (1922).

The soliciting of orders for goods by a salesman of a foreign corporation and the shipment of goods into the state pursuant to such orders were in interstate commerce and did not constitute doing business within the state so as to subject the corporation to service of process within the state. *Parke, Davis & Co. v. Fifth Judicial Dist. Court*, 93 Utah 217, 72 P.2d 466 (1937).

Missouri corporation which purchased goods from a Utah corporation by a contract executed in Missouri and performed by shipment to Missouri, but which had no place of business or representatives in Utah, was not doing business in Utah. *Kansas City Whsle. Grocery Co. v. Weber Packing Corp.*, 93 Utah 414, 73 P.2d 1272 (1937).

Taking of guaranty for payment of past and future indebtedness, which was incidental to the business of selling goods in interstate commerce, did not amount to doing business within the state so as to render the contract void because of failure of the plaintiff, a foreign corporation, to qualify. *Miller Brewing Co. v. Capi-*

tol Distrib. Co., 94 Utah 43, 72 P.2d 1056 (1937), rehearing denied, 94 Utah 51, 77 P. 2d 359 (1938).

Ordinary steps to collect the sale price of interstate-sold goods done within borders of the state where goods were delivered, such as taking note or guaranty for payment of the debt, was not doing business within state. *Miller Brewing Co. v. Capitol Distrib. Co.*, 94 Utah 43, 72 P.2d 1056 (1937), rehearing denied, 94 Utah 51, 77 P.2d 359 (1938).

Fact that a licensing agreement which permitted the licensee to use the name, dances, instruction books, and methods of the licensor compelled the licensee to comply with certain requirements as a condition to continuing the privilege of the license did not lead to the conclusion that the licensor was doing business in the state by the licensee as the licensor's alter ego or agent. *Shaw v. Jeppson*, 121 Utah 155, 239 P.2d 745 (1952).

Foreign corporation which entered into contracts with in-state dealers requiring it to send guaranties to consumers, advertise through circulars, share newspaper advertising expense, furnish advertising matter, and send an agent, when requested, to assist the dealer in sales, was not "doing business" for purposes of the statute since these acts were incidental to the entire interstate character of the contracts. *East Coast Dist. Corp. v. Reynolds*, 7 Utah 2d 362, 325 P.2d 853 (1958).

Whether a corporation is "transacting business in the state" is to be ascertained upon analysis of the corporation's total activities therein and not solely upon the particular transaction upon which the corporation bases its claim; a corporation which maintained an office in the state, was listed in both regular and yellow pages of the telephone directory, maintained a local bank account, maintained permanent personnel in its office, and regularly served its customers does not fall within the exceptions of either Subsection (f) or (i) merely because the contract upon which they based their action provides that the orders were subject to acceptance by the corporation in its main office in Connecticut. *Dunham-Bush, Inc. v. Bill Hartmann Plumbing & Heating, Inc.*, 30 Utah 2d 177, 515 P.2d 92 (1973).

Foreign corporation was transacting business within the state and was required to obtain a certificate of authority to do business where it instructed its Utah representative on business matters, maintained the telephone and other directory listings for the Utah operation under its foreign corporation name, maintained a bank account for the Utah operation under its foreign corporation name, the president of the foreign corporation held himself out as president of the Utah operation, and the foreign corporation asserted ownership of the Utah operation's office records. *Horton v. Richards*, 594 P.2d 891 (Utah 1979).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Foreign Corporations § 193 et seq.

C.J.S. — 20 C.J.S. Corporations § 1810 et seq.

Key Numbers. — Corporations ⇐ 631 et seq.

16-10-103. Powers of foreign corporation.

A foreign corporation which shall have received a certificate of authority under this act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

History: L. 1961, ch. 28, § 103.

Meaning of "this act". — See the note under the same catchline following § 16-10-102.

NOTES TO DECISIONS

Long-arm statute.

A nonresident corporation with a permit to engage in business in the state enjoys the same benefits and privileges as a domestic corpora-

tion and may, therefore, take advantage of the long-arm statute of this state, § 78-27-22 et seq. *Hughes Tool Co. v. Meier*, 486 F.2d 593 (10th Cir. 1973).

16-10-104. Corporate name of foreign corporation.

No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(b) Shall not be the same as, or deceptively similar to: (1) the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state; (2) a name the exclusive right to which is, at the time, reserved in the manner provided in this act, or the name of a corporation which has in effect a registration of its name as provided in this act; or (3) any trademark or service mark registered in this state or assumed name of a person or persons conducting business within this state that is properly registered and carried on the active index maintained by the secretary of state, unless there has been filed with the secretary of state the written consent to such similarity executed by such corporation or holder of such reserved or registered corporate name, trademark, or service mark or by the person or persons owning an assumed name carried on the active index.

History: L. 1961, ch. 28, § 104; 1979, ch. 57, § 11.

Meaning of "this act". — See the note under the same catchline following § 16-10-102.

COLLATERAL REFERENCES

Brigham Young Law Review. — Utah's Business Name Statutes: "An Open Invitation to Litigation," 1983 B.Y.U. L. Rev. 795.

Am. Jur. 2d. — 36 Am. Jur. 2d 177 to 183, Foreign Corporations §§ 185 to 192.

C.J.S. — 20 C.J.S. Corporations § 1887.

A.L.R. — Right to protection of corporate name, as between domestic corporation and foreign corporation not qualified to do business in state, 26 A.L.R.3d 994.

Key Numbers. — Corporations ⇔ 644.

16-10-105. Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state.

History: L. 1961, ch. 28, § 105.

16-10-106. Application for certificate of authority.

(1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application for the certification to the Division of Corporations and Commercial Code, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(d) the address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address;

(e) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(f) the names and respective addresses of the directors and officers of the corporation;

(g) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(h) a statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(i) a statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this chapter;

(j) an estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount of business which will be transacted by the corporation at or from places of business in this state during such year; and

(k) additional information as may be necessary or appropriate in order to enable the Division of Corporations and Commercial Code to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable as prescribed in this title.

(2) This application shall be made on forms prescribed and furnished by the Division of Corporations and Commercial Code and shall be signed by the corporation by its president or a vice-president and by its secretary or assistant secretary and verified by one of the officers signing such application.

History: L. 1961, ch. 28, § 106; 1984, ch. 66, § 118; 1985, ch. 178, § 58.

Amendment Notes. — The 1984 amendment substituted "Division of Corporations and Commercial Code" for "secretary of state"

throughout the section; and substituted "prescribed" for "proscribed" in Subsection (2).

The 1985 amendment substituted "shall make application for the certification" in Subsection (1) for "shall make application there-

for"; substituted "the gross amount of business" near the end of Subsection (1)(j) for "the gross amount thereof"; substituted "prescribed in this title" at the end of Subsection (1)(k) for

"in this act prescribed"; substituted "shall be signed" near the middle of Subsection (2) for "shall be executed in duplicate"; and made minor changes in phraseology.

16-10-107. Filing of application for certificate of authority.

(1) An original and one copy of the application of the corporation for a certificate of authority shall be delivered to the Division of Corporations and Commercial Code, together with a certificate of good standing, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the Division of Corporations and Commercial Code finds that such application conforms to law, it shall, when all fees have been paid as prescribed in this title:

(a) endorse on the original and one copy the word "filed" and the month, day, and year of the filing;

(b) file in its office the original application and certificate of good standing; and

(c) issue a certificate of authority to transact business in this state to which it shall attach the copy.

(3) The certificate of authority, together with the attached copy of the application shall be returned to the corporation or its representatives.

History: L. 1961, ch. 28, § 107; 1979, ch. 57, § 12; 1984, ch. 66, § 119; 1985, ch. 178, § 59.

Amendment Notes. — The 1984 amendment substituted references to Division of Corporations and Commercial Code for references to secretary of state throughout the section; and made minor changes in style.

The 1985 amendment substituted references to an original and one copy of the application for certificate of authority for references to duplicate originals throughout the section; sub-

stituted "prescribed in this title" at the end of Subsection (2) for "in this act prescribed"; substituted "attach the copy" for "affix the other duplicate original application" in Subsection (2)(c); deleted "affixed thereto by the Division of Corporations and Commercial Code" following "application" in Subsection (3); and made minor word changes in Subsections (2)(a) and (2)(b).

Cross-References. — Filing articles of incorporation required, Utah Const., Art. XII, Sec. 9.

16-10-108. Effect of certificate of authority.

Upon the issuance of a certificate of authority by the Division of Corporations and Commercial Code, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this act or by § 59-13-61.

History: L. 1961, ch. 28, § 108; 1984, ch. 66, § 120.

Amendment Notes. — The 1984 amendment substituted "Division of Corporations and

Commercial Code" for "secretary of state."

Meaning of "this act". — See the note under the same catchline following § 16-10-102.

16-10-109. Registered office and registered agent of foreign corporation.

Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(a) a registered office which may be, but need not be, the same as its place of business in this state.

(b) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

History: L. 1961, ch. 28, § 109.

Cross-References. — Agent for service of

process and place of business in state constitutionally required, Utah Const., Art. XII, Sec. 9.

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Foreign Corporations § 263.

C.J.S. — 20 C.J.S. Corporations § 1815.

Key Numbers. — Corporations ⇌ 646.

16-10-110. Change of registered office or registered agent of foreign corporation — Resignation of registered agent.

(1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing with the Division of Corporations and Commercial Code a statement setting forth:

- (a) the name of the corporation;
- (b) the address of its then registered office;
- (c) if the address of its registered office be changed, the address to which the registered office is to be changed;
- (d) the name of its then registered agent;
- (e) if its registered agent be changed, the name of its successor registered agent;
- (f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (g) that such change was authorized by resolution duly adopted by its board of directors.

(2) This statement shall be signed by the corporation by its president or a vice-president, and verified by him, and delivered to the Division of Corporations and Commercial Code. If that division finds that such statement conforms to the provisions of this chapter, it shall file such statement in its office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) Any registered agent of a foreign corporation may resign as such agent upon filing a signed written notice with the Division of Corporations and Commercial Code, which shall mail a copy of the notice to the corporation at

its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate 30 days after receipt of such notice by the Division of Corporations and Commercial Code.

History: L. 1961, ch. 28, § 110; 1984, ch. 66, § 121; 1985, ch. 178, § 60.

Amendment Notes. — The 1984 amendment substituted references to Division of Corporations and Commercial Code for references to secretary of state throughout the section; and made minor changes in phraseology and style.

The 1985 amendment substituted "is effective" at the end of Subsection (2) for "shall be-

come effective"; substituted "a signed written notice" near the beginning of Subsection (3) for "a written notice thereof, executed in duplicate"; substituted "shall mail a copy of the notice" near the middle of Subsection (3) for "shall forthwith mail a copy thereof"; deleted "upon the expiration of" after "shall terminate" near the end of Subsection (3); and made minor changes in phraseology.

16-10-111. Service of process on foreign corporation.

(1) The registered agent appointed by a foreign corporation authorized to transact business in this state is an agent of that corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) Whenever a foreign corporation authorized to transact business in this state fails to appoint or maintain a registered agent in this state, or whenever the registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation is suspended or revoked, then the director of the Division of Corporations and Commercial Code is an agent of that corporation upon whom any process, notice, or demand may be served. Service on the director of the Division of Corporations and Commercial Code of any process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of that office, an original and one copy of the process, notice, or demand. If a process, notice, or demand is served on the director of the Division of Corporations and Commercial Code, he shall immediately cause one of the copies to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service upon the director of the Division of Corporations and Commercial Code is complete upon the tenth day following the service.

(3) The Division of Corporations and Commercial Code shall keep a record of all processes, notices, and demands served upon it under this section, and shall record the time of such service and its action with [sic] on the service.

(4) This section does not limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner permitted by law.

History: L. 1961, ch. 28, § 111; 1979, ch. 57, § 13; 1984, ch. 66, § 122; 1985, ch. 178, § 61.

Amendment Notes. — The 1984 amendment substituted references to Division of Corporations and Commercial Code and to its director for references to secretary of state throughout the section; and made minor changes in style.

The 1985 amendment substituted references to an original and one copy of the articles of incorporation for references to duplicate originals throughout the section; substituted "if a process" at the beginning of the third sentence of Subsection (2) for "in the event any such process"; substituted "This section does not limit" at the beginning of Subsection (4) for

"Nothing herein contained shall limit"; deleted "now or hereafter" near the end of Subsection (4); and made minor changes in phraseology.

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Foreign Corporations §§ 263, 264.

C.J.S. — 20 C.J.S. Corporations §§ 1815, 1942, 1943, 1946.

A.L.R. — Federal or state law as controlling, in diversity action, whether foreign corpora-

tion is amenable to service of process in state, 6 A.L.R.3d 1103.

Who is "general" or "managing" agent of foreign corporation under statute authorizing service of process on such agent, 17 A.L.R.3d 625.

Key Numbers. — Corporations ⇌ 646, 668.

16-10-112. Amendment to articles of incorporation of foreign corporation.

(1) If the articles of incorporation of a foreign corporation authorized to transact business in this state are amended to change the corporation's name or purpose, increase or decrease the authorized shares or par value, or change the classes of stock, the foreign corporation shall, within 30 days after the amendment becomes effective, file with the Division of Corporations and Commercial Code a copy of the amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the articles of incorporation of a foreign corporation authorized to transact business in this state are amended in a manner other than that described in Subsection (1), it is not necessary for the foreign corporation to file a copy of the amendments with the Division of Corporations and Commercial Code.

(3) Amending the articles of incorporation, whether or not the amendment is filed with the Division of Corporations and Commercial Code, does not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor does the amendment authorize the foreign corporation to transact business in this state under any name other than the name stated in its certificate of authority unless an application for an amended certificate of authority is filed under § 16-10-14.

History: L. 1961, ch. 28, § 112; 1979, ch. 57, § 14; 1984, ch. 66, § 123; 1985, ch. 178, § 62.

Amendment Notes. — The 1984 amendment substituted "with the Division of Corporations and Commercial Code" for "in the office of the secretary of state."

The 1985 amendment added a new paragraph designated as Subsection (1); designated the unnumbered paragraph as Subsections (2) and (3); substituted "in a manner other than that described in Subsection (1), it is not necessary" in the middle of Subsection (1) for "it

shall not be necessary"; substituted the language "amending the articles of incorporation, whether or not the amendment is filed with the Division of Corporations and Commercial Code, does not" at the beginning of present Subsection (3) for "but amending the articles of incorporation shall not"; substituted "nor does the amendment authorize the foreign corporation" near the middle of Subsection (3) for "nor authorize such corporation"; added the language at the end of Subsection (3) beginning with "unless an application"; and made minor changes in phraseology.

16-10-113. Merger of foreign corporation authorized to transact business in this state.

Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within 30 days after such merger becomes effective, file with the Division of Corporations and Commercial Code a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in the state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: L. 1961, ch. 28, § 113; 1984, ch. 66, § 124.

Amendment Notes. — The 1984 amend-

ment substituted "Division of Corporations and Commercial Code" for "secretary of state."

16-10-114. Amended certificate of authority.

A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application to the Division of Corporations and Commercial Code.

The requirements in respect to the form and contents of the application, the manner of its execution, the filing of an original and one copy with the Division of Corporations and Commercial Code, the issuance of an amended certificate of authority, and the effect of the issuance are the same as in the case of an original application for a certificate of authority.

History: L. 1961, ch. 28, § 114; 1984, ch. 66, § 125; 1985, ch. 178, § 63.

Amendment Notes. — The 1984 amendment substituted "Division of Corporations and Commercial Code" for "secretary of state" in both paragraphs.

The 1985 amendment deleted "therefor" af-

ter "by making application" near the end of the first paragraph; substituted "an original and one copy" near the middle of the second paragraph; substituted "the effect of the issuance are" near the end of the second paragraph for "the effect thereof, shall be"; and made minor changes in phraseology.

16-10-115. Withdrawal of foreign corporation.

(1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the Division of Corporations and Commercial Code a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Division of Corporations and Commercial Code an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;
 (c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the director of the Division of Corporations and Commercial Code;

(e) a post-office address to which the director of the Division of Corporations and Commercial Code may mail a copy of any process against the corporation that may be served by him; and

(f) such additional information as may be necessary or appropriate in order to enable the Division of Corporations and Commercial Code to determine and assess any unpaid fees payable by such foreign corporation as in this act prescribed.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the Division of Corporations and Commercial Code and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

History: L. 1961, ch. 28, § 115; 1984, ch. 66, § 126.

Amendment Notes. — The 1984 amendment substituted "Division of Corporations and

Commercial Code" and "director of Division of Corporations and Commercial Code" for "secretary of state" throughout the section; and made minor changes in style.

NOTES TO DECISIONS

Revocation of certificate.

Service of summons on nonresident corporation was properly quashed where corporation's certificate of authority to do business within state had been revoked for failure to file report notwithstanding contention that corporation,

once having qualified to do business within state, remained subject to jurisdiction of courts of state until such time as it had withdrawn from state in compliance with this statute. *Apache Tank Lines v. Beall Pipe & Tank Corp.*, 19 Utah 2d 104, 426 P.2d 623 (1967).

16-10-116. Filing of application for withdrawal.

An original and one copy of the application for withdrawal shall be delivered to the Division of Corporations and Commercial Code. If that division finds that the application conforms to the provisions of this act, it shall, when it has received a tax clearance from the State Tax Commission and all fees have been paid as prescribed in this title:

(1) endorse on the original and one copy the word "filed" and the month, day, and year of the filing;

(2) file the original in its office; and

(3) issue a certificate of withdrawal to which it shall attach the copy.

The certificate of withdrawal, together with the attached copy of the application for withdrawal shall be returned to the corporation or its representa-

tive. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state ceases.

History: L. 1961, ch. 28, § 116; 1984, ch. 66, § 127; 1985, ch. 178, § 64.

Amendment Notes. — The 1984 amendment substituted references to the Division of Corporations and Commercial Code for references to the secretary of state throughout the section.

The 1985 amendment substituted references to an original and one copy of the articles of incorporation for references to duplicate originals throughout the section; substituted "as prescribed in this title" for "as in this act pre-

scribed" at the end of the first paragraph; deleted "thereof" at the end of Subsection (1); substituted "attach" for "affix" in Subsection (3); substituted "attached copy" for "duplicate original" near the beginning of the last paragraph; deleted "affixed thereto by the Division of Corporations and Commercial Code" before "shall be returned" in the last paragraph; and made minor changes in phraseology.

Meaning of "this act". — See the note under the same catchline following § 16-10-102.

16-10-117. Revocation of certificate of authority.

(1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the Division of Corporations and Commercial Code upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this act, or has failed to pay any fees or penalties prescribed by this act when they have become due and payable; or

(b) the corporate powers, rights, and privileges of the corporation have been forfeited as provided by § 59-13-61;

(c) the corporation has failed to appoint and maintain a registered agent in this state as required by this act; or

(d) the corporation has failed, after change of its registered office or registered agent, to file with the Division of Corporations and Commercial Code a statement of such change as required by this act; or

(e) the corporation has failed to file with the Division of Corporations and Commercial Code any amendment to its articles of incorporation or any articles of merger within the time prescribed by this act; or

(f) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this act.

(2) No certificate of authority of a foreign corporation shall be revoked by the Division of Corporations and Commercial Code unless (a) it shall have given the corporation not less than 60 days notice thereof by mail addressed to its registered office in this state, and (b) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

History: L. 1961, ch. 28, § 117; 1984, ch. 66, § 128.

Amendment Notes. — The 1984 amendment substituted references to Division of Cor-

porations and Commercial Code for references to secretary of state throughout the section; and made minor changes in phraseology and style.

NOTES TO DECISIONS

Amenability to jurisdiction.

Service of summons on nonresident corporation was properly quashed where corporation's certificate of authority to do business within the state had been revoked for failure to file report notwithstanding contention that corporation, once having qualified to do business

within state, remained subject to jurisdiction of courts of the state until such time as it had withdrawn from the state in compliance with § 16-10-115. *Apache Tank Lines v. Beall Pipe & Tank Corp.*, 19 Utah 2d 104, 426 P.2d 623 (1967).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Foreign Corporations § 215.

C.J.S. — 20 C.J.S. Corporations § 1843.
Key Numbers. — Corporations ⇐ 651.

16-10-118. Issuance of certificate of revocation.

Upon revoking any certificate of authority, the Division of Corporations and Commercial Code shall:

- (1) issue an original and one copy of a certificate of revocation;
- (2) file the original certificate in its office; and
- (3) mail to such corporation at its registered office in this state a notice of such revocation accompanied by the copy of the certificate.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state ceases.

History: L. 1961, ch. 28, § 118; 1984, ch. 66, § 129; 1985, ch. 178, § 65.

Amendment Notes. — The 1984 amendment substituted references to the Division of Corporations and Commercial Code for references to the secretary of state.

The 1985 amendment substituted references to an original and one copy of the articles of incorporation for references to duplicate originals throughout the section; and made minor changes in phraseology.

16-10-119. Application to corporations heretofore authorized to transact business in this state.

Foreign corporations which are duly authorized to transact business in this state at the time this act takes effect, for a purpose or purposes for which a corporation might secure such authority under this act, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this act, and from the time this act takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this act.

History: L. 1961, ch. 28, § 119.

Meaning of "this act". — See the note under the same catchline following § 16-10-102.

16-10-120. Transacting business without certificate of authority.

No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any act of [action], suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and taxes which would have been imposed by the laws of this state upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this act and thereafter filed all reports required by this act, plus all penalties imposed by the laws of this state for failure to pay such fees and taxes. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

History: L. 1961, ch. 28, § 120; 1963, ch. 19, § 9.

Meaning of "this act". — See the note under the same catchline following § 16-10-102.

Cross-References. — Security for costs may be required, Rules of Civil Procedure, Rule 12(j).

NOTES TO DECISIONS

ANALYSIS

Actions by foreign corporation.

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Actions by foreign corporation.

Foreign corporation which had complied with the statute at the time of bringing action could maintain action for a tort committed

against it, although at the time of the wrong it was doing business in the state without complying with its laws. *California Land & Constr. Co. v. Halloran*, 82 Utah 267, 17 P.2d 209 (1932).

Answer or defenses.

In an action by a noncomplying foreign corporation the fact of noncompliance could be set up by defendant in his answer. *Fred Miller Brewing Co. v. Gaudio*, 50 Utah 66, 165 P. 786 (1917).

Defense that plaintiff, a foreign corporation, did not have legal capacity to maintain an action because it was doing business in this state in violation of the law was waived unless taken timely by pleading. *J.B. Colt Co. v. District Court*, 72 Utah 281, 269 P. 1017 (1928).

Construction and application.

Statute applied to all transactions whatsoever, including implied contracts. *Dunn v. Utah Serum Co.*, 65 Utah 527, 238 P. 245 (1925).

The owner of a business was not precluded from enforcing a covenant not to compete merely because a foreign corporation, disqualified from suing, might also have an interest in the contract, and might incidentally derive an indirect benefit from the enforcement of the owner's rights. *Shaw v. Jeppson*, 121 Utah 155, 239 P.2d 745 (1952).

Defense of actions by noncomplying foreign corporation.

Statute did not prohibit a noncomplying corporation from defending an action brought against it, and, therefore, it could plead the statute of limitations. *Clawson v. Boston Acme Mines Dev. Co.*, 72 Utah 137, 269 P. 147, 59 A.L.R. 1318 (1928).

Statute was not intended to prevent noncomplying foreign corporations from defending suits against them in this state. *John C. Cutler Ass'n v. De Jay Stores*, 3 Utah 2d 107, 279 P.2d 700 (1955).

Effect of compliance.

By complying with state law, foreign corporations were accorded the same but no other or greater rights than domestic corporations. *First Sec. Corp. v. State Tax Comm'n*, 91 Utah 101, 63 P.2d 1062 (1936).

Mortgages.

Mortgagor who was president of a corporate mortgagee could not avoid payment of amount due on mortgage by virtue of his own failure to qualify the corporation for transaction of business within the state; the corporation was entitled to foreclose on mortgage where it was qualified to transact business in state prior to trial, despite its nonqualification at the time the mortgage was given. *National American Life Ins. Co. v. Bainum*, 28 Utah 2d 45, 497 P.2d 854 (1972).

Proof of doing business.

Conveyances to foreign corporation by four deeds, recorded in this state, was insufficient evidence of corporate presence within this

state to constitute "doing business" within the state of Utah. *Marchant v. National Reserve Co. of Am.*, 103 Utah 530, 137 P.2d 331 (1943).

Recovery by nonresident materialman.

Nonresident materialman was not precluded from maintaining action against a resident general contractor who had agreed to indemnify the materialman upon a subcontractor's default, even though the materialman had not obtained a certificate of authority under the statute since the materialman was not doing business in the state within the meaning of the statute in light of evidence that less than 1% of the materialman's business was done within the state, his business was interstate in nature, all materials were shipped from outside state, he had neither office nor permanently established agent in state and his salesmen were in state only two or three times during year. *L.B. Foster Co. v. Nelson Bros. Constr. Co.*, 18 Utah 2d 430, 424 P.2d 881 (1967).

Right to "benefit" of local laws.

Foreign corporation, failing to comply with laws of this state, had no power to engage in business in state and was not entitled to "benefit" of laws of state with reference to corporations. *Rio Grande Western Ry. Co. v. Telluride Power Transmission Co.*, 23 Utah 22, 63 P. 995 (1900), writ of error dismissed, 187 U.S. 569, 23 S. Ct. 178, 47 L. Ed. 307 (1903); *First Security Corp. v. State Tax Comm'n*, 91 Utah 101, 63 P.2d 1062 (1936).

Transacting business in state.

Bringing of suit by foreign corporation to secure its legal rights was not "doing business." *George R. Barse Live-Stock Comm'n Co. v. Range Valley Cattle Co.*, 16 Utah 59, 50 P. 630 (1897).

Statute was not designed or intended to prohibit doing of a single act of business by a foreign corporation which had not filed copy of articles where the corporation had no apparent intention to do any other act or engage in corporate business. *George R. Barse Live-Stock Comm'n Co. v. Range Valley Cattle Co.*, 16 Utah 59, 50 P. 630 (1897).

The doing of a single act or the making of a single contract by a foreign corporation in the line of its business within the state, without having complied with regulatory statutes did not constitute "doing business" within the state. *A. Booth & Co. v. Weigand*, 30 Utah 135, 83 P. 734, 10 L.R.A. (N.S.) 693 (1906).

Instituting suits by foreign corporation in courts of Utah to enforce contractual right was not "doing business" within state. *Home Brewing Co. v. American Chem. & Ozokerite Co.*, 58 Utah 219, 198 P. 170 (1921).

Missouri corporation which purchased goods from a Utah corporation by a contract executed in Missouri and performed by shipment to Mis-

souri, but which had no place of business or representatives in Utah, was not doing business in Utah. *Kansas City Whsle. Grocery Co. v. Weber Packing Corp.*, 93 Utah 414, 73 P.2d 1272 (1937).

Foreign corporation not "doing business" within this state could furnish purchase money for acquisition of stock of a Utah company and may take title thereto, without qualifying under statute. *Marchant v. National Reserve Co. of Am.*, 103 Utah 530, 137 P.2d 331 (1943).

To be "doing business" in a state, a corporation must be engaged in a continuing course of business, rather than a few isolated transactions, whether those transactions are within the usual scope of that corporation's business or not. There must be at least some permanence about the presence and business transactions of the corporation within the state. *Marchant v. National Reserve Co. of Am.*, 103 Utah 530, 137 P.2d 331 (1943).

Fact that a licensing agreement which permitted the licensee to use the name, dances, instruction books, and methods of the licensor compelled the licensee to comply with certain requirements as a condition to continuing the privilege of the license did not lead to the conclusion that the licensor was doing business in the state by the licensee as the licensor's alter ego or agent. *Shaw v. Jeppson*, 121 Utah 155, 239 P.2d 745 (1952).

The sales of a noncomplying foreign company did not amount to "doing business" where there was only solicitation in the state and one continuous shipment from the company's premises to the buyers, so the company could sue the buyers in a Utah court. *William C. Moore & Co. v. Sanchez*, 6 Utah 2d 309, 313 P.2d 461 (1957).

Foreign corporation which entered into contracts with dealers in the state which required it to send guaranties to consumers, advertise through circulars, share newspaper advertising expense, furnish advertising matter, and send an agent, when requested, to assist the dealer in sales, was not "doing business" for purposes of the statute, since these acts were incidental to the entire interstate character of the contracts. *East Coast Dist. Corp. v. Reynolds*, 7 Utah 2d 362, 325 P.2d 853 (1958).

Even if individual acts contracted to be performed by a foreign corporation would not constitute "doing business," this was not determinative, since the activities and situation were

to be judged as a whole. *East Coast Dist. Corp. v. Reynolds*, 7 Utah 362, 325 P.2d 853 (1958).

In determining whether a foreign corporation was doing business in the state by entering into contracts with residents, the place of the contract was not controlling as much as the place of performance and the things to be done. *East Coast Dist. Corp. v. Reynolds*, 7 Utah 2d 362, 325 P.2d 853 (1958).

Corporation which had done business in the state for over thirty years, maintained an office under its own name, maintained a listing in both the regular and yellow pages of the directory, maintained a local bank account, maintained permanent personnel in its office, regularly served its customers and maintained a warehouse in Salt Lake County from which it delivered merchandise on order, "transacted business" within the state and is unable to maintain an action within the state without having obtained a certificate of authority; fact that corporation based its action on contract which provided that the offer was subject to acceptance by the corporation's main office in Connecticut does not bring it within the exceptions in Subsections 16-10-102(f) and (i). *Dunham-Bush, Inc. v. Bill Hartmann Plumbing & Heating, Inc.*, 30 Utah 177, 515 P.2d 92 (1973).

Foreign corporation was transacting business within state and was not entitled to maintain an action in Utah state courts without a certificate of authority to do business where it instructed its Utah representative on business matters, maintained the telephone and other directory listings for the Utah operation under its foreign corporation name, maintained a bank account for the Utah operation under its foreign corporation name, the president of the foreign corporation held himself out as president of the Utah operation, and the foreign corporation asserted ownership of the Utah operation's office records. *Horton v. Richards*, 594 P.2d 891 (Utah 1979).

Waiver of defense.

The filing of a counterclaim against a foreign corporation plaintiff transacting business within this state without a certificate of authority does not waive the defense to the foreign corporation's complaint that it is not entitled to maintain its action since it is transacting business within the state without a certificate of authority. *Horton v. Richards*, 594 P.2d 891 (Utah 1979).

COLLATERAL REFERENCES

Am. Jur. 2d. — 36 Am. Jur. 2d Foreign Corporations § 280 et seq.

C.J.S. — 20 C.J.S. Corporations §§ 1856 to 1860.

A.L.R. — Compliance after commencement

of action as affecting application of statute denying access to courts or invalidating contracts where corporation fails to comply with regulatory statute, 6 A.L.R.3d 326.

Key Numbers. — Corporations ⇌ 653, 661.