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Ch. 143, Sec. 9, as found in Burns’ Indiana Statutes (1942 Repl.), Section 13-252. Examination of this section of the statute indicates that the subject could be paroled by the proper authorities and immediately given an absolute discharge from his sentence. Thus, in the case of State Prison inmates, it would seem that the practice of giving a parole and a parole discharge in order to release the man to a wanting authority would be permissible under the existing law so far as inmates of the Indiana State Prison are concerned, after a determination by the Board of Parole in conformity with the provisions of the Acts of 1897, Ch. 143, Sec. 9, as found in Burns’ Indiana Statutes (1942 Repl.), Section 13-252.

OFFICIAL OPINION NO. 36

July 28, 1955

Honorable Crawford Parker
Secretary of State
201 State House
Indianapolis 4, Indiana

Dear Mr. Parker:

Receipt is acknowledged of your letter requesting an Official Opinion which reads as follows:

“We are asking an official opinion from your office of whether or not the above captioned Corporation is doing business in the State of Indiana.

“The facts are as follows:

“(1) The New England Coal and Coke Company is a Massachusetts corporation and is a sales and distribution corporation for coal. It is a wholly owned subsidiary of the Eastern Gas and Fuel Associates, also a Massachusetts corporation, which is a mining corporation.

“(2) The New England Coal and Coke Company signed a contract with four (4) Indiana coal mining corporations. One of the coal mining corporations is Walter Bledsoe and Company, operating in Vigo Coun-
ty, Indiana. The purpose of said contract was to buy from the Indiana corporations coal to be shipped outside the state. These contracts were entered into by the parties in the State of Indiana. The contract further provides the coal is to be loaded F. O. B. on cars at the mine and title thereupon passes to the New England Coal and Coke Company.

“(3) The New England Coal and Coke Company has entered into a contract in Indiana with the Chicago, Milwaukee and St. Paul Railroad Company to haul said coal to Mobile, Alabama.

“(4) The total amount of these contracts is $879,000.00.

“(5) The above captioned Corporation is not admitted to do business in the State of Indiana.”

The Acts of 1929, Ch. 215, Secs. 56 through 69, as amended in the Acts of 1949, Ch. 194, Secs. 16 and 18, as found in Burns’ Indiana Statutes (1948 Repl., 1955 Supp.), Sections 25-301 to 25-323, provides certain statutory requirements for foreign corporations “transacting” or “doing” business in this state. Burns’ Indiana Statutes (1948 Repl.), Section 25-301, states as follows:

“Any foreign corporation organized for pecuniary profit, except banking, surety, trusts, safe deposit, railroad, insurance and building and loan corporations, not now qualified to transact business in this state, before transacting business in this state shall procure a certificate of admission from the secretary of state in the manner hereinafter provided and shall otherwise comply with the provisions and be subject to the regulations set forth in this part 3 of this act.”

The question therefore presented is whether the New England Coal and Coke Company, a sales and distribution corporation for coal, by contracting in Indiana with four coal mining corporations for the purchase of coal to be loaded F. O. B. on cars at the mines in Indiana and shipped to a point outside the state, is “doing business” so as to require the foreign corporation to comply with the statute.
In determining what particular acts or transactions constitute "doing business" or "transacting business" within the meaning of our statute, the Court in Lowenmeyer v. National Lumber Co. (1919), 71 Ind. App. 458, 125 N. E. 67, said:

"* * * Such question, therefore, is ordinarily a matter of judicial determination. The courts as a rule have held that, where a foreign corporation enters into a single contract, or engages in some other isolated business act within a particular state, with no intention to repeat the same therein, or make such state a basis for the conduct of any part of its corporate business, such corporation cannot be said to be 'doing business' or 'transacting business' within such state, within the meaning of the usual statutory provisions regulating the transaction of business by foreign corporations. * * *"

For support of this rule, see North Dakota Realty & Investment Co. v. Abel (1926), 85 Ind. App. 563, 155 N. E. 46 and Burroughs v. Southern Colonization Co. (1932), 96 Ind. App. 93, 163 N. E. 517.

An examination of some of the provisions of the statute serves to give an idea of what the phrases "transacting business" and "doing business" mean. The Acts of 1929, Ch. 215, Sec. 59, as found in Burns' Indiana Statutes (1948 Repl.), Section 25-304, states:

"Whenever a foreign corporation desires to be admitted to do business in this state, it shall present to the secretary of state at his office accompanied by the fees prescribed by law:

* * *

"(2) An application for admission, executed in the manner hereinafter provided, setting forth:

"(a) The name of such corporation;

"(b) The location of its principal office or place of business without this state, and the location of the proposed principal office or place of business within this state;" (Our emphasis)
The Acts of 1929, Ch. 215, Sec. 60, as found in Burns' Indiana Statutes (1948 Repl.), Section 25-305, provides as follows:

"Upon the presentation of the application for admission, the secretary of state, if he finds that it conforms to law, shall indorse his approval upon each of the duplicate copies, and, when all fees required by law shall have been paid, shall file one [1] copy of the application, together with the authenticated copy of the articles of incorporation or association of the corporation, in his office, and shall issue to the corporation an original and a duplicate certificate of admission, accompanied by one [1] copy of the application bearing the indorsement of his approval, which certificate shall set forth:

* * *

"(6) The address of the corporation in this state; and

(7) The name and address of its resident agent in this state for the service of legal process." (Our emphasis)

The Acts of 1929, Ch. 215, Sec. 61, as amended, as found in Burns' Indiana Statutes (1948 Repl., 1955 Supp.), Section 25-306, states:

"Each foreign corporation admitted to do business in this state, shall keep constantly on file in the office of the secretary of state an affidavit of its president or a vice-president and its secretary or an assistant secretary, setting forth the location of its principal office in this state, and the name of some person who may be found at such office as its agent or representative on whom service of legal process may be had in all suits and actions that may be commenced against it. * * *" (Our emphasis)

It can be seen that the statute makes reference to a "principal office or place of business" of the foreign corporation in this state.

In Mutual Manufacturing Co. v. Alpaugh et al. (1910), 174 Ind. 381, 386, 91 N. E. 504, the Court held that a traveling
salesman of a foreign corporation was not transacting business in this state in order to require the corporation to conform to our statute, by taking orders for goods manufactured by the foreign corporation. In determining what was meant by the phrase "transacting business" as set out in the statute which was substantially the same as our present statute, the Court said:

"Section 4092 Burns 1908, Acts 1907, p. 286, § 7, seems to make it quite clear that the phrase 'transacting business or exercising its corporate powers or franchise' in section two of said act (§ 4086 Burns 1908) or appointing agents to do business under said § 4086, or § 4089 Burns 1908, Acts 1907 p. 286, § 5, or imposing these conditions as prerequisites to enforcing contracts under § 4101, supra, or § 4094 Burns 1908, Acts 1907 p. 286, § 9, does not apply to cases like the one before us, but to cases where a corporate situs or domicile is sought in this State, or, in the language of the act, where a 'principal business office' or a permanent agency is located." (Our emphasis)

In Thompson’s Commentaries on the Law of Corporations, 3rd Ed., § 6626, “doing business” is defined as follows:

“A foreign corporation is ‘doing business’ within a particular state when it transacts therein some substantial part of its ordinary business which is continuous in character, as distinguished from merely casual or occasional transactions. The transaction of occasional or incidental corporate business does not necessarily bring a corporation within the provision of such a statute, though it may be more than a single transaction. * * *” (Our emphasis)

Under the given facts the corporation in question is purchasing coal in Indiana for resale in another state. 23 Am. Jur., Foreign Corporations, § 367, states as follows:

“In the view of most courts which have considered the question, the purchase by a foreign corporation, within the state, of machinery, supplies, or stock in trade for use in its business in another state and the
In determining whether a New Mexico corporation was "doing business" in Colorado so as to require it to comply with the statute providing that a foreign corporation, before it is authorized to do any business in Colorado, file a certificate with the Secretary of State and the recorder of the county in which such business is carried on designating the principal place where the business shall be carried on and the authorized agent residing at the principal place of business upon whom process may be served, the Court in Colorado Iron-Works v. Sierra Grande Min. Co. (1890), 15 Colo. 499, 25 Pac. 325, said:

"* * * being an artificial person created by and deriving all its powers from its charter, it (a corporation) is local in its character, cannot migrate, can only, in a state or country foreign to that of its creation, make such contracts and do such business as is permitted by the laws of the state, and under such restrictions as may be imposed by its laws. We do not think section 260 of the General Statutes of this state applicable to the case under discussion, nor that such a construction was intended or contemplated by the legislature. Corporations being, as above stated, confined in their business operations to the state from which they derive their existence, and being only allowed to exercise their functions in a foreign jurisdiction by the comity, and under the laws of that state, the intention of the section above referred to was to enable such corporations as moneyed institutions, insurance companies, and that class of corporations, perhaps not to migrate, but by means of agents to extend their business and allow such agencies to become domiciled and transact the business of the corporations under the parent office and original
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chapter. True, in a limited and technical sense, almost any business transaction, no matter how trivial, made by a corporation, whether in its own or adjacent state—the buying of goods by a domestic mercantile corporation in New York for the purpose of sale and business here, or any transaction of that kind,—may be deemed the doing of business in New York. A sale and delivery of goods in Wyoming or Nebraska by a domestic corporation of this state might technically be termed doing business in those states; but such accidental or incidental transactions were not, in our view, contemplated by nor within the intention of the legislature in the section under consideration. Nor in this case can the purchase of machinery to be manufactured here, transported to, set up and operated in, New Mexico, nor the selling of ores mined and produced in New Mexico, and shipped here to a market, be regarded as doing business in this state, as contemplated in such section.” (Our emphasis)

In Plew v. Board et al. (1916), 274 Ill. 232, 113 N. E. 603, the Court stated as follows:

“* * * It was not the intention of the statute that a foreign corporation could not incur indebtedness in this state for the purchase of supplies or property or otherwise, or give notes or obligations for its indebtedness, without complying with the conditions for procuring a license to transact business in this state, for which purpose the corporation must give the location of its principal business office and the name of some person who may accept service upon the corporation and become bound to make the reports required of domestic corporations and assume other burdens. * * *”

The Supreme Court in Rosenberg Bros. & Co. v. Curtis Brown Co. (1922), 260 U. S. 516, 43 S. Ct. 170, 67 L. Ed. 372, held:

“* * * The Curtis Brown Company is a small retail dealer in men’s clothing and furnishings at Tulsa, Oklahoma. It never applied, under the foreign corporation laws, for a license to do business in New York; nor did
it at any time authorize suit to be brought against it there. It never had an established place of business in New York; nor did it, without having such established place, regularly carry on business there. It had no property in New York; and had no officer, agent or stockholder resident there. *Its only connection with New York appears to have been the purchase there from time to time of a large part of the merchandise to be sold at its store in Tulsa.* The purchases were made, sometimes by correspondence, sometimes through visits to New York of one of its officers. Whether, at the time its president was served with process, he was in New York on business or for pleasure; whether he was then authorized to transact any business there; and to what extent he did transact business while there, are questions on which much evidence was introduced; and some of it is conflicting. But the issues so raised are not of legal significance. The only business alleged to have been transacted by the company in New York, either then or theretofore, related to such purchases of goods by officers of a foreign corporation. *Visits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction of the State.* * * *” (Our emphasis)

I conclude from the decisions of our courts and those of other jurisdictions that, although the New England Coal and Coke Company has made more than one isolated transaction in Indiana, this corporation is neither: (1) performing a substantial part of its business which is continuous in its character in the State of Indiana; (2) making the state a basis for the conduct for its corporate business; (3) nor seeking a corporate situs or domicile in this state. The corporation is merely purchasing stock in trade for the use of its business of selling coal in other states, and not transacting business within the meaning of the statute.

It is therefore my opinion that under the circumstances as described in your letter, that the New England Coal and Coke Company, a Massachusetts corporation, is not doing business in the State of Indiana.