



GERALD C. MANN

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ATTORNEY GENERAL

# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

Honorable Wm. J. Lawson  
Secretary of State  
Austin, Texas

Dear Sir:

Attention: Will Mann Richardson

Opinion No. 0-3384

Re: Whether the Holland Texas  
Hypotheek Bank of Amsterdam,  
Holland, will be doing busi-  
ness in Texas under the re-  
cited facts.

You have requested the opinion of this department upon the question of whether the Holland Texas Hypotheek Bank of Amsterdam, Holland, under the recited facts, may surrender its permit to do business in Texas and not be subject to liability thereafter for doing business in Texas without a permit. There was enclosed with your request letter a copy of a letter from the attorney for the corporation which recites the following facts:

"The Holland Texas Hypotheek Bank of Amsterdam, Holland, incorporated under the laws of the Kingdom of Netherlands, was granted a permit to do business in Texas on November 30, 1931, which permit will expire on November 30th of this year. In May, 1940, the Netherlands was invaded by Germany and occupied by force and as a result of such invasion and for the purposes of protecting the assets of the subjects of the Kingdom of the Netherlands, the President issued a proclamation freezing all of said funds located within the United States. On May 24, 1940, the Royal Netherlands Government residing in London, promulgated its decree whereby the title to all property in the United States was vested in the Netherlands Government. Under the decree, the Minister of the Netherlands was appointed Attorney in Fact for the Government and was duly empowered to delegate the authority vested in him.

"For the purpose of placing an additional protection around the assets of this corporation as against the enemy, it became necessary to adopt a plan in the nature of a reorganization. In brief, the plan followed was to organize a domestic corporation under the laws of this State, said corporation being designated the Holland Texas Mortgage Company with an office in Port Arthur, Texas. All of the assets of the Holland Texas Hypotheek Bank of Amsterdam, Holland, were transferred to the Holland Texas Mortgage Company. Since said date, the domicile of the Amsterdam corporation has been changed under Dutch law to Willemstad, Curacao. The only asset now held by the Holland Texas Hypotheek Bank of Willemstad, Curacao, is a mortgage on the assets of the Holland Texas Mortgage Company which bears interest. The corporation does not perform any of the acts authorized under its permit but continues to maintain an office in Port Arthur, Texas. All business such as erecting or repairing any building or improvement and the loaning of money, etc., is done by the Holland Texas Mortgage Company."

The question of whether a foreign corporation is doing intrastate business in Texas is essentially one of fact. The cases are legion which deal with the problem. Particularly is this true where there is the relationship of parent and subsidiary, or one otherwise contractual.

We cannot categorically say, as a matter of law, either that the Hypotheek Bank of Amsterdam will or will not be doing business in Texas henceforth. The statement that the Holland corporation will have a mortgage on the assets of the Texas corporation, which bears interest, suggests many possibilities relative to the actual relationship between the two corporations. Likewise, the recitation that the foreign corporation will continue to maintain an office in Texas does not describe the activities or functions thereof. Moreover, the statement that the Holland corporation will not continue to perform any of the acts authorized under its permit or its charter is a legal conclusion, requiring both a knowledge of the provisions of the corporation's permit and charter, together with an understanding of that which the corporation will continue to do in Texas.

Certainly the maintenance of an office in Texas suggests the doing of business in Texas. In King v. Monitor

Honorable Wm. J. Lawson, Page 3, (0-3384)

Drilling Company, 92 S. W. 1046, 1047, 1048, it was said:

"And unless a foreign corporation is transacting or soliciting business in this State, or has an office here, it is not required under these circumstances to have a permit to do business to enable it to sue in our courts \* \* \*" (Emphasis ours)

In Morton v. Thomas & Sons Company, 93 S. W. 711, 712 (cited by the corporation's attorney in the above mentioned letter), the significance of the maintenance of an office was recognized by the court as follows:

"The petition discloses that plaintiff, a corporation organized and doing business in Kentucky, holds the two notes executed and delivered to it by defendant in Texas and made payable in Galveston of that State. It is not disclosed that it had been doing business in this State, and such allegations do not bring it within the operation of the statutes. The case of Chatman v. Hallwood (Tex. Civ. App.) 73 S. W. 969, does not control, for there the plaintiff corporation alleged that it had an office in Dallas County, Texas, thus bringing itself clearly and affirmatively within the terms of the statute. The exact point was decided by this court in line with our present conclusion in King v. Monitor Drilling Co. (recently decided by this court) 92 S. W. 1046. \* \* \*" (Emphasis ours)

In Bank of America v. Whitney Central National Bank, 261 U. S. 171, the Supreme Court of the United States held that the corporation was not doing business in New York, and speaking through Mr. Justice Brandies said at page 173:

"The Whitney Central had what would popularly be called a large New York business. The transactions were varied, important and expensive. But it had no place of business in New York. \* \* \*" (Emphasis ours)

Perhaps, however, the fact of the maintenance of an office of itself is not conclusive of the question as to whether the Holland corporation will be doing business in Texas. As said by Mr. Justice Holmes in Edwards v. Chile Copper Company, 270 U. S. 452, "the activities and situation must be judged as a whole".

Honorable Wm. J. Lawson, Page 4, (0-3384)

The general rule touching the question of whether a foreign corporation is transacting business in a state is summarized in 14a Corpus Juris, Page 1270, Section 3977, as follows:

"The general rule is that when a foreign corporation tranacts some substantial part of its ordinary business in a state, it is doing, transacting, carrying on, or engaging in business therein, within the meaning of the statutes under consideration."

An interminable discussion could be had upon this question in the light of the numerous cases in which it has been involved. We do not, however, believe that such would serve a useful purpose in this opinion. The cases do demonstrate, however, why this department cannot with propriety categorically rule upon the question of whether the Holland Texas Hypotheek Bank will be doing business in Texas under the limited statement of facts before us.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Zollie C. Steakly

Zollie C. Steakley  
Assistant

ZCS:LM:EAC

APPROVED MAY 1, 1941

/s/ Glenn R. Lewis

ACTING ATTORNEY GENERAL

APPROVED  
OPINION  
COMMITTEE

BY B.W.B.  
CHAIRMAN