



THE ATTORNEY GENERAL OF TEXAS

GROVER SELLERS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Hon. Claude Isbell
Secretary of State
Austin, Texas

Attention: J. L. McGarity

Dear Sir:

Opinion No. 0-7479

Re: Can the Secretary of State
issue a permit to do business
in Texas to the American
Technical Society under the
facts submitted?

In your letter of October 30, 1946, requesting an opinion of this department, you are primarily concerned with the question as above presented in the caption hereto. You further state that the State Department of Education referred such corporation to your office in order that it might obtain from you a certificate to the effect that such corporation had a permit to do business in Texas.

Accompanying your letter is a photostatic copy of the certificate of organization of the American Technical Society, No. 9367, issued by the Secretary of State of the State of Illinois January 29, 1940. What apparently constitutes the articles of incorporation of such society under the laws of the State of Illinois, is attached in photostated form. In paragraph 2 of this latter document, setting forth the object for which the society is formed, it is expressly provided that "no pecuniary profit from the operations of this corporation and no part of the net earnings of this corporation may or shall at any time inure to the benefit of any member thereof." In this respect, we assume the status of the corporation has remained the same since the date of its incorporation in 1940.

Four additional questions are presented in your letter which are conditioned as follows:

"(2) If the Secretary of State can issue such permit
how does he determine his filing fee and franchise tax?

"(3) If the Secretary of State cannot issue such
corporation a permit to do business in Texas can such
corporation enter its bid and supply the State Department
of Education with Text Books to be used in the Free Schools
of the State of Texas?

"(4) If such corporation can bid and supply the State Department of Education with such Text Books without obtaining from this office a permit to do business in Texas and a certificate of good standing then, and in that event, what character of certificate should the State Department of Education require of such corporation?"

"(5) Is such corporation subject to the Gross Receipts Tax which is levied upon the sale of text books pursuant to Section 41 of Article 7047 of Vernon's Annotated Texas Revised Civil Statutes?"

Article 1529, V. A. C. S., provides:

"Any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any territory of the United States, or of any municipality of such State or territory, or of any foreign government, sovereignty or municipality, desiring to transact or solicit business in Texas, or to establish a general or special office in this State, shall file with the Secretary of State a duly certified copy of its articles of incorporation; and thereupon such official shall issue to such corporation a permit to transact business in this State for a period of ten years from the date of so filing such articles of incorporation. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes."

As to the primary question concerning issuance of permit to such corporation, it would appear that its articles of incorporation bring it within the holding of our Opinion No. 0-5998 rendered to your office and approved May 5, 1940, hence requiring no permit.

Answering your request, it is our opinion that:

(1) The Articles of incorporation dated January 29, 1940, do not require a permit to be issued the corporation in question. Whether or not a corporation is in truth and in fact a non-profit corporation is a question of fact. Our answer, therefore, is limited to the documents submitted and is based upon and in accord with your finding as stated in your request to the effect that its charter discloses the corporation not organized for profit.

(2) It necessarily follows from our answer to the first question, your second question requires no answer.

In view of our answer to question No. 1, we answer questions Nos. 3, 4 and 5 as follows in the order presented:

(3) We know of no statutory restriction nor have we been advised of an facts that would prohibit the State Department of Education from contracting with a corporation not organized for pecuniary profit.

(4) We know of no character of certificate to be required of the Secretary of State by the State Department of Education other than a permit when the facts require one.

(5) This question is one of fact. However, we find no statutory provision that would exempt the corporation in question from being liable for occupation taxes under Article 7047, Subdivision 41, V. A. C. S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ Wm. J. R. King

By

Wm. J. R. King
Assistant

WmK:djm/ ldw

APPROVED NOV. 29, 1946
s/ Harris Toler
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE
BY B. W. B.
CHAIRMAN