

CHAPTER 303

MINNESOTA FOREIGN CORPORATION ACT

303.01 CITATION.

HISTORY. 1935 c. 200 s. 25; M. Supp. s. 7495-25.

At the end of Chapter 303 we have placed annotations regarding sections repealed by Laws 1935, Chapter 200, Sections 27, 30, effective March 1, 1936.

Mason's Statutes 1927, Sections 7493, 7494, 7495, now repealed, impose penalties on foreign corporations which do not comply therewith, should receive a strict construction, it being a policy of the state to encourage and protect those who make loans and invest money in this state. *Flakne v Met. Life*, 198 M 465, 270 NW 566.

A foreclosure by advertisement is not a suit or proceeding in court, and a foreign corporation may so foreclose a mortgage held by it even if it has no license to do business in this state. *Flakne v Met. Life*, 198 M 465, 270 NW 566.

Where the intention of the legislature is to limit an act to corporations organized for profit, it has been so provided in express terms. The statutes regulating the admission of foreign corporations to do business in the state apply only to those organized for profit. *La Belle v Hennepin Co. Bar*, 206 M 290, 288 NW 788.

Jurisdiction of respondent, a foreign corporation, was not obtained by the service of the summons herein by the sheriff leaving copies thereof with the chief clerk of the corporation division of the secretary of state, or by leaving copies of such summons with the department of securities' commissioner, it appearing that respondent entered the state in May, 1929, and withdrew in October, 1931. Since this time it has transacted no business in the state; has never registered any securities in the state, or applied for or received license to deal in securities; has never appointed any agent to receive process, nor complied with Minnesota statutes on withdrawing from the state; and the securities sold to plaintiff were never registered with the securities' commissioner. The court rightly set aside and quashed the service of the summons. *Babcock v Bancamerica-Blair*, 212 M 423, 4 NW(2d) 89.

The repeal of the Minnesota statutes requiring a foreign corporation, withdrawing from the state, to file a power of attorney appointing the secretary of state as its agent for the service of legal process, in actions arising out of anything done or omitted in the state, did not vitiate a power of attorney theretofore filed; and consequently service on a foreign corporation which has withdrawn from the state is properly made by serving the secretary of state designated as its agent. *Flour City v General Bronze*, 21 F. Supp. 112.

Jurisdiction over a foreign corporation ceases when the corporation ceases to do business and withdraws from the state, and the fact that there may have been jurisdiction at some prior time will not suffice. *Sievertsen v Bancamerica-Blair*, 43 F. Supp. 233.

Where a foreign corporation transacted a securities business in Minnesota from May, 1929, to October, 1931, without a license as a foreign corporation, or as a broker under the statute, and without registering the securities which it sold, and withdrew from the state in October, 1931, service on the secretary of state and the securities commissioner in 1939 did not give the federal district court jurisdiction over the corporation on the theory of estoppel. *Sievertsen v Bancamerica-Blair*, 43 F. Supp. 233.

The foreign corporation act does not apply to either a national bank or a foreign state bank. 1936 OAG 10, June 6, 1935 (92c).

A federal agency is exempt and need not comply with the provisions of Minnesota foreign corporation act. 1936 OAG 89, June 4, 1936 (92c).

Having given a foreign corporation a license to do business in the state, the state may revoke it in its discretion for good cause, or without any cause, and its

MINNESOTA STATUTES 1945 ANNOTATIONS

1893

MINNESOTA FOREIGN CORPORATION ACT 303.09

motive in doing so is not open to any inquiry, subject only to the constitutional requirements with respect to the obligation of contracts, vested rights, and due process of law. With like limitations, additional requirements, conditions and restrictions may be imposed upon foreign corporations already licensed to do business within the state. 1938 OAG 116, Jan. 28, 1937 (92c).

303.02 DEFINITIONS.

HISTORY. 1935 c. 200 s. 1; M. Supp. s. 7495-1.

See annotations under section 303.01.

303.03 FOREIGN CORPORATIONS MUST HAVE CERTIFICATE OF AUTHORITY.

HISTORY. 1935 c. 200 s. 2; M. Supp. s. 7495-2.

The defendant, a foreign corporation, took a real estate mortgage while duly licensed to do business in this state, and foreclosed the mortgage by advertisement after the license expired. The foreclosure was valid. *Morris v Penn Mutual*, 196 M 403, 265 NW 278; *Flakne v Metropolitan*, 198 M 465, 270 NW 566; *Babcock v Bancamerica-Blair*, 212 M 428, 4 NW(2d) 89.

A foreign corporation dealing in motor vehicles cannot be granted a license to sell vehicles in this state under section 168.27 until it has complied with section 303.03. OAG June 10, 1935 (632a-8).

303.04 FOREIGN CORPORATIONS NOT TO DO BANKING BUSINESS.

HISTORY. 1935 c. 200 s. 3; M. Supp. s. 7495-3.

The exception "engaged only in the business of loaning money or investing in securities in the state" which appears in the repealed law, does not appear in Laws 1935, Chapter 200. OAG Aug. 10, 1939 (92c).

303.05 NAMES OF CORPORATIONS.

HISTORY. 1935 c. 200 s. 4; M. Supp. s. 7495-4.

303.06 APPLICATION FOR CERTIFICATE OF AUTHORITY.

HISTORY. 1935 c. 200 s. 5; M. Supp. s. 7495-5.

Minnesota statute as to filing and licensing fees held valid as applied to a federally licensed custom-house broker whose business was localized in the state; and not in conflict with existing federal laws and regulations or the commerce clause of the constitution. *Union Brokerage v Jensen*, 322 US 206.

303.07 INITIAL LICENSE FEE.

HISTORY. 1935 c. 200 s. 6; M. Supp. s. 7495-6.

This section does not apply to a federal agency such as the reconstruction finance corporation mortgage company. 1936 OAG 89, Oct. 3, 1935 (92c).

303.08 ISSUANCE OF CERTIFICATE OF AUTHORITY.

HISTORY. 1935 c. 200 s. 7; M. Supp. s. 7495-7.

303.09 POWERS SAME AS DOMESTIC CORPORATION.

HISTORY. 1935 c. 200 s. 8; M. Supp. s. 7495-8.

The general corporation law enabling non-resident corporations to do business in the state with the same rights and privileges as those of similar domestic corporations, does not grant them "immunity" from licensing or taxation on basis of classification different from that applied to domestic corporations in case where the fact of residence, or non-residence, is a valid distinguishing element of classification. *State ex rel v Starkweather*, 214 M 232, 7 NW(2d) 747.

MINNESOTA STATUTES 1945 ANNOTATIONS

303.10 MINNESOTA FOREIGN CORPORATION ACT

1894

The rights and obligations of stockholders of a South Dakota corporation and the ultra vires character of the corporation's acts are determined by the laws of that state. The questions of preferential transfers of real estate by a corporation are determined by the laws of the state in which the real estate is situated. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162.

303.10 OFFICE AND AGENT.

HISTORY. 1935 c. 200 ss. 9, 10; M. Supp. ss. 7495-9, 7495-10.

303.11 NOTICE OF CHANGES, WHERE FILED.

HISTORY. 1935 c. 200 s. 11; M. Supp. s. 7495-11.

303.12 CERTIFICATE OF CHANGES TO BE RECORDED WITH REGISTER OF DEEDS.

HISTORY. 1935 c. 200 s. 12; M. Supp. s. 7495-12.

303.13 SERVICE OF PROCESS.

HISTORY. 1935 c. 200 s. 13; M. Supp. s. 7495-13.

General statutes of limitations, although making no mention of foreign corporations, nevertheless apply thereto. A foreign corporation which has ceased doing business in the state and withdrawn therefrom except that, in obedience to statute, it has left here a continuing agent for personal service of process in actions arising from its Minnesota business is, in contemplation of law, continuously present here for service upon it in such actions. Hence the running of the statute of limitations is not tolled by its qualified departure from the state. *Pomeroy v Nat'l City*, 209 M 155, 296 NW 513; *Flour City v General Bronze*, 41 F. Supp. 112.

Service of summons upon a Minnesota corporation in which defendant owned no stock and over which it had no authority or control, except as to certain obligations imposed upon it by virtue of an agreement covering the sale of defendant's products in Minnesota and which had not been designated as defendant's agent for the service of process or otherwise in Minnesota, either directly or by implication, did not give Minnesota courts jurisdiction over defendant. *Nurmi v J. I. Case Co.* 218 M 579, 17 NW(2d) 79.

The designation by a foreign corporation, in conformity with valid state statute and as a condition of doing business within the state, of an agent upon whom service may be made, is an effective consent to be sued in federal courts of that state. *Bowles v Schreiber*, 56 F. Supp. 814.

Minnesota statutes governing registration and sale of securities is a valid exercise of the police power. The statute of limitations on action against a foreign corporation arising out of sale of unregistered securities was tolled when the corporation formally withdrew from the state, cancelled its license and actually departed, notwithstanding that corporation was still amenable to process. *Stearn v Nat'l Cit'y*, 25 F. Supp. 948.

The applicant consents to service of process either upon its named agent or upon a state official designated by statute. *Union Brokerage v Jensen*, 322 US 206.

Federal jurisdiction; co-citizenship between stakeholder and claimant. 24 MLR 416.

303.14 ANNUAL REPORT.

HISTORY. 1935 c. 200 s. 14; M. Supp. s. 7495-14.

Treasury stock is included under the term "issued or allotted shares". OAG March 28, 1939 (92a-24).

Reports under Minnesota and Delaware corporation laws. 22 MLR 662.

303.15 SECRETARY OF STATE TO FIX LICENSE FEE.

HISTORY. 1935 c. 200 s. 15; M. Supp. s. 7495-15.

MINNESOTA STATUTES 1945 ANNOTATIONS

1895

MINNESOTA FOREIGN CORPORATION ACT 303.22

303.16 WITHDRAWAL FROM STATE.

HISTORY. 1935 c. 200 s. 16; M. Supp. s. 7495-16.

A foreign corporation may withdraw from the state leaving a continuing agent for personal service of process. It would still be "present" and the statute of limitations is not tolled by its qualified departure. *Pomeroy v Nat'l City*, 209 M 155, 296 NW 513.

303.17 REVOCATION OF LICENSE.

HISTORY. 1935 c. 200 s. 17; M. Supp. s. 7495-17.

A foreign corporation which did not requalify as required by section 303.22 was automatically excluded from doing business in the state but was not liable for penalties provided by section 303.20 unless the penalties have been determined, fixed or liquidated by a proper tribunal. 1938 OAG 116, Jan. 28, 1937 (92c).

303.18 CANCELLATION OF CERTIFICATE OF AUTHORITY.

HISTORY. 1935 c. 200 s. 18; M. Supp. s. 7495-18.

303.19 REINSTATEMENT.

HISTORY. 1935 c. 200 s. 19; M. Supp. s. 7495-19.

303.20 FOREIGN CORPORATION MAY NOT MAINTAIN ACTION UNLESS LICENSED.

HISTORY. 1935 c. 200 s. 20; M. Supp. s. 7495-20.

A foreign corporation whether licensed to do business or not, has a right of one sued to defend or interpose a counterclaim. *Flanke v Metropolitan*, 198 M 465, 270 NW 566.

Although a corporation is not included within the provisions of any state statute, it may voluntarily submit itself to the jurisdiction of the state courts. *Flour City v General Bronze*, 21 F. Supp. 112.

The question of what constitutes local or intrastate business, within the meaning of the statute, requiring a foreign corporation doing a local business to obtain a license, is largely one of fact to be determined by the particular circumstances; and in this case where the foreign corporation conducted a substantial business as a result of the activities of the local agent, it was doing a "local" business within the meaning of the statute requiring various corporations doing business within the state to obtain licenses. *Cohn-Hall-Marx Co. v Feinberg*, 214 M 584, 8 NW(2d) 825.

The statute requiring a foreign corporation to obtain a certificate of authority before bringing action in the state court, is a reasonable requirement as applying to a foreign corporation operating in the state, custom-house, brokerage business in Minnesota. *Union Brokerage v Jensen*, 215 M 207, 9 NW(2d) 721.

303.21 FEES.

HISTORY. 1935 c. 200 s. 21; M. Supp. s. 7495-21.

303.22 APPLICABLE TO PRESENT CORPORATIONS.

HISTORY. 1935 c. 200 s. 22; M. Supp. s. 7495-22.

A foreign corporation which did not qualify under this section prior to March 1, 1936, was automatically excluded from doing business in the state. 1938 OAG 116, Jan. 28, 1937 (92c).

Annotations relating to Mason's Statutes, sections 7493, 7494, 7495, repealed by Laws 1935, Chapter 200, Sections 27, 30, effective March 1, 1936.

MINNESOTA STATUTES 1945 ANNOTATIONS

Mason's Statutes Section 7493

The established policy in this state permits the suing of transitory actions against foreign corporations regardless of where the cause of action arose, if the defendant may be reached by process. A foreign corporation is "doing business" in the state when the character and extent of its business warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the state. *Erving v C. & N. W. Ry. Co.* 171 M 87, 214 NW 12.

In an action against a foreign railroad company doing business in this state, services must be had in the manner provided by statute. *Bernier v Ill. Central*, 176 M 415, 223 NW 674.

Stockholders of a foreign corporation which has forfeited its charter and terminated its existence, may under the facts stated in the opinion, procure an action for the appointment of a receiver, and for other relief. In such an action the controversy is disclosed by the pleadings as between individuals and corporations as such, not being before the court. Mason's Statutes, Sections 7493, 7494, as amended, are without application. *Lind v Johnson*, 183 M 239, 236 NW 317.

The defendant foreign corporation purchased hay in this state and was subsequently doing intrastate business in Minnesota. The summons served upon its agent in the state was proper service. *Massee v Consumers Hay Co.* 184 M 169, 238 NW 327.

The purchase of several rent producing pieces of real estate by a foreign corporation not licensed to do business in this state, and its management of the property for a substantial period, is the transaction of business, and the corporation must obtain a license as required by this section. *Vogt v Ganley*, 184 M 442, 242 NW 338.

To obtain jurisdiction over a foreign corporation operating a railroad or steamship line outside of the state but none in this state, and where no property is attached, the corporation must be doing business here of such a nature and character as to warrant the inference that advertising subjected itself to the local jurisdiction and is, by its duly authorized officer or agent, here present; and the defendant in this case being represented only by a soliciting agent or agency, selling but not issuing tickets for transportation, was not doing business in this state, and jurisdiction was not obtained by the attempted service on the soliciting agent. *Gloeser v Dollar Stmshp. Lines*, 192 M 376, 256 NW 666.

Sections 7493, 7494, 7495 should be strictly construed. *Flakne v Metropolitan*, 198 M 465, 270 NW 566.

When a foreign association and charitable corporation pursues within our limits the purpose for which it is organized, it is doing business in Minnesota and is amenable to process here. *High v Supreme Lodge*, 206 M 599, 289 NW 519.

Defendant entered the state in May, 1929, and withdrew in October, 1931; it did not register any securities and had no license from this state; it never appointed any agent, nor complied with Mason's Statutes, Sections 3996-11, 7493, 7494, and the court properly set aside and quashed the service of the summons. *Babcock v Bancamerica-Blair*, 212 M 428, 14 NW(2d) 89; *Sievertsen v Bancamerica-Blair*, 43 F. Supp. 233.

Amendment of the federal constitution. 10 MLR 204.

Jurisdiction of a court to interfere with the internal affairs of a foreign corporation. 18 MLR 192.

Constitutional problems arising from service of process on foreign corporations. 19 MLR 379.

Mason's Statutes Section 7494

There is a distinction between the license provided for in Mason's Statutes, Sections 7493, 7494, and the license prescribed by Mason's Statutes, Section 3996-11. Where a cause of action arises against a foreign corporation while it was licensed to do a brokerage business under section 3996-11 and had appointed the chairman of the securities commission its agent to receive service, it could not be served with process under section 7494 where its license to transact business as a foreign cor-

MINNESOTA STATUTES 1945 ANNOTATIONS

1897

MINNESOTA FOREIGN CORPORATION ACT 303.24

poration was not granted until after the cause arose. *Anderson v Chase*, 193 M 443, 258 NW 743.

Defendant, a foreign corporation, took a real estate mortgage while duly licensed to do business in this state and foreclosed by advertisement after the license expired. The foreclosure was valid. *Morris v Penn Mutual*, 196 M 403, 265 NW 278.

Listing in a telephone directory does not constitute doing business. *Garber v Bancamerica-Blair*, 205 M 75, 285 NW 723.

General statutes of limitation, although making no mention of foreign corporations, apply thereto; and the running of the statute is not tolled by its qualified departure from the state. *Pomeroy v Nat'l City*, 209 M 155, 296 NW 513.

The repeal of the Minnesota statute requiring a foreign corporation withdrawing from doing business in the state to file a power of attorney appointing the secretary of state as its agent, did not vitiate a power of attorney theretofore filed thereunder. *Flour City v General Bronze*, 21 F. Supp. 112.

Jurisdiction over a foreign corporation licensed under statutes to sell securities, may be obtained in any suit or proceeding, regardless of its character, and of whether it arose within the state. The statute of limitations on an action against a foreign corporation arising out of sale of unregistered securities was tolled when corporation formally withdrew from the state and cancelled its license, notwithstanding that the corporation was still amenable to process. *Stern v Nat'l City*, 25 F. Supp. 949.

Sale of securities; limitation of actions; effect of withdrawal of foreign corporation from state. 23 MLR 829.

Mason's Statutes Section 7495

This action by a foreign corporation organized for pecuniary profit, and with its principal place of business in New York City, is for the recovery of damages resulting from defendant's breach of contract. The business contemplated by and under the contract was interstate; the action could not be barred because of the failure of plaintiff to secure a license under Mason's Statutes, Section 7493, 7494, 7495. *Association v Bruen*, 179 M 457, 229 NW 580.

303.23 CERTIFICATE ISSUED BY SECRETARY OF STATE.

HISTORY. 1935 c. 200 s. 23; M. Supp. s. 7495-23.

303.24 RIGHTS SUBJECT TO AMENDMENT.

HISTORY. 1935 c. 200 s. 26; M. Supp. s. 7495-26.