

N.D.A.G. Letter to Kusler (June 18, 1991)

June 18, 1991

Honorable Jim Kusler
Secretary of State
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Secretary Kusler:

Thank you for your May 10, 1991, letter regarding L.R. Corporation.

You ask whether an out-of-state farm corporation can be granted a certificate of authority to transact business in North Dakota. N.D.C.C. § 10-06-01 prohibits all corporations, with limited exceptions, from owning or leasing farm or ranch land and from engaging in the business or farming or ranching.

According to its application, L.R. Corporation will own a commercial building for leasing. This activity does not involve the owning or leasing of farmland. Furthermore, it does not appear that the activity falls within the definition of engaging in the business of farming or ranching. N.D.C.C. § 10-06-01.1 defines "farming or ranching" as "cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy product, or fruit or horticulture products." Owning a commercial building does not involve the aforementioned activities.

Since the activity of L.R. Corporation does not appear to fall within the prohibitions of N.D.C.C. ch. 10-06, the Secretary of State is not prevented by N.D.C.C. ch. 10-26 from issuing a certificate of authority to transact business.

You also ask if there is a statute limiting the number of years for which past due fees can be collected from a corporation which has operated in North Dakota without a certificate of authority.

Statutes of limitation apply to actions by the state. N.D.C.C. § 28-01-23. N.D.C.C. § 28-01-16(2) provides a six-year statute of limitations for actions upon a liability created by statute, while N.D.C.C. § 28-01-18(2) provides a two-year statute of limitation for the collection of penalties. These statutes, however, are superseded by a provision of N.D.C.C. ch. 10-22 which specifically addresses the issue of fee and penalty collection.

N.D.C.C. § 10-22-19 provides that a foreign corporation transacting business without a certificate of authority is liable to the state for the years during which it conducted business without a certificate, in an amount equal to all fees which would have been imposed, together with any penalty for nonpayment of fees.

"Where a statute dealing conclusively with a special subject conflicts with a prior and more general enactment, the later and more specific statute must prevail." Morton County v. Tavis, 66 N.W.2d 201, 205 (N.D. 1954). N.D.C.C. § 1-02-07. N.D.C.C. § 10-22-19 was enacted in 1957 and specifically addresses the collection of fees and penalties from an unregistered foreign corporation. N.D.C.C. §§ 28-01-16 and 28-01-17 date back to the territorial laws of 1862, and are general in nature. Since N.D.C.C. § 10-19-22 is a later-enacted statute specifically addressing the collection of fees and penalties from a foreign corporation operating without authority, it is my opinion that N.D.C.C. § 10-19-22 controls over the more general statutes of limitation.

I hope this information is helpful. Please contact me if you have any further questions.

Sincerely,

Nicholas J. Spaeth

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