

January 12, 1994

Honorable Pete T. Cenarrusa  
Secretary of State  
**STATEHOUSE MAIL**  
Boise, ID 83720

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Notaries Public

Dear Mr. Cenarrusa:

**Question Presented**

Does a non-resident employee working for the Bonneville Power Administration (BPA) in Portland, Oregon, and making frequent business trips to Idaho qualify to be commissioned as a notary public?

**Conclusion**

BPA employees living in Portland and doing business in Idaho comply with the requirements of Idaho Code § 51-104(2) and may qualify to be notaries public provided that the other qualifications in Idaho Code § 51-104 are met.

**Analysis**

The BPA's Oregon employees frequently visit Idaho on business trips. In conducting the BPA's business, the employees often travel to remote Idaho locations in order to obtain necessary documents. Many of these documents need to be notarized. The question is whether these non-resident employees qualify to be notaries public under Idaho law.

Idaho Code § 51-104(2) states that non-residents may qualify to be commissioned as notaries public if they are "employed in or doing business in the state of Idaho." (Emphasis added.) The Oregon employees are not employed in the State of Idaho and, thus, do not qualify under that provision. To qualify to be notaries public under Idaho law, the BPA's Oregon employees must meet the statutory requirement of "doing business in the state of Idaho."

Idaho Code § 51-102 provides definitions for title 51; however, it does not define "doing business." Moreover, the Idaho Legislature has not provided a general definition of "doing business" in the statutes. The available legislative history taken at the time of the adoption of § 51-104(2) provides no additional guidance as to the definition of "doing business." Guidance, therefore, must be obtained from case law.

Courts have frequently held that it is difficult to precisely define the term "doing business." In State Highway and Public Works Commission v. Diamond S. S. Transp. Corp., 34 S.E.2d 78, 80 (N.C. 1945), the North Carolina Supreme Court, in discussing the phrase "doing business" held:

It has been frequently pointed out that no satisfactory general definition can be made of the phrase "doing business" as found in our statutes, and that, generally speaking, each case must be determined on its own facts. "No all embracing rule as to what is doing business" has been laid down. The question is one of fact, and must be determined largely according to the facts of each individual case, rather than by application of fixed definite rules.

(Citations omitted.) The Idaho Supreme Court echoed the holdings of the North Carolina court in Adjustment Bureau of the Portland Assoc. of Credit Men v. Conley, 44 Idaho 148, 152 (1927), stating that:

The question of when a foreign corporation is doing business within a state . . . must be decided upon the particular facts and circumstances entering into the transaction.

(Citation omitted.) However, the Oregon Supreme Court, in Haas v. Ellis, 361 P.2d 820, 826 (Oreg. 1961), held the term "doing business" generally means "engaging in activities in the pursuit of gain." The general definition adopted by the Oregon court appears to be a safe rule of thumb to use when reviewing the facts of each out-of-state applicant on a case-by-case basis.

In the present case, it appears that the BPA employees are requesting to be commissioned as notaries public for the purposes of carrying out job-related duties when on business trips in Idaho. As such, it would appear that the BPA employees meet the "doing business" requirement contained in Idaho Code § 51-104(2). If the employees meet the other qualifications contained in Idaho Code § 51-104, their request to be commissioned as notaries public should be granted.

I hope this adequately addresses your question. If you have any additional questions with reference to this or any other matter, please contact me.

Very truly yours,

TERRY B. ANDERSON  
Chief, Business Regulation and  
State Finance Division