

"(a). Solicit or take orders for liquor from only the holders of permits authorized to import liquor into this State;

"(b). Ship, or cause to be shipped, liquor into Texas only in consummation of sales made to the holders of permits authorized to import liquor into Texas.

"(2). No permit shall be granted to an applicant for a Non-resident Seller's Permit until it shall have been shown by the applicant that he has first filed with the Secretary of State a certificate certifying that he has appointed an agent, resident within this State, together with the street address and business of such agent. All notices of hearing for refusal, cancellation, or suspension may be served upon the designated agent as required herein, or upon the permittee, or if a corporation, upon any officer thereof, or upon any other agent of the non-resident seller authorized as such to sell liquor in this state, and all proceedings as to such hearings shall be as is otherwise provided by this Act. Service of notice in such manner shall constitute due process; provided further, that if any permittee shall have failed to maintain within this state a designated agent for service as herein required, service may be had on the Secretary of State, and it shall be the duty of the Secretary of State to send any citation served on him to the holder of the permit by registered mail, return receipt requested, and such receipt shall be prima facie evidence of service upon the permittee.'

"Section 12 of Article 667 of the Penal Code provides as follows:

"Sec. 12. Any manufacturer, distributor, or person shipping or delivering beer into this State shall file with the Secretary of State a certificate certifying the name of his agent upon whom service may be had, and his or its street address and business; and in the event such person fails to comply with this requirement within fifteen (15) days from the effective date hereof the service may be had on the Secretary of State in any cause of action arising out of the violation of this Act, and it shall be the duty of the Secretary of State to send any such citation served on him to such person, who may be in a foreign state, by registered mail, return receipt requested, and such receipt shall be prima facie evidence of service on such person.'

" . . .

"We respectfully request your opinion in answer to the following questions:

"1. Where a foreign corporation has a permit to do business in Texas and files in the Office of the Secretary of State a Power of Attorney under the provisions of House Bill No. 709, is the filing of said Power of Attorney a compliance with the provisions of Section 15 $\frac{1}{2}$, Article 666 of the Penal Code and Section 12, Article 667 of the Penal Code or shall said corporation be required to file another form of a Power of Attorney to comply with Section 15 $\frac{1}{2}$, Article 666 of the Penal Code and Section 12, Article 667 of the Penal Code?

"2. Where a corporation does not have a permit to do business in Texas, but files a Power of Attorney appointing an agent for service in the Office of the Secretary of State under the provisions of House Bill No. 709, is said filing a compliance with the provisions of Section 15 $\frac{1}{2}$, Article 666 of the Penal Code and Section 12, Article 667 of the Penal Code or shall said corporation be required to file another form of a Power of Attorney to comply with Section 15 $\frac{1}{2}$, Article 666 of the Penal Code and Section 12, Article 667 of the Penal Code?

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"3. Should this form provide for a showing as to whether the person filing the form is an individual, partnership, association or a corporation?

"4. If it is a corporation, what officers of the corporation shall sign the Power of Attorney?

"5. Should a copy of the minutes of the Board of Directors of the corporation appointing the agent for service accompany the Power of Attorney or would it be sufficient for the Power of Attorney to provide that the officers are acting under the authority of the Board of Directors of the corporation, if the Power of Attorney is properly sworn to?

"6. Is it the duty of the Secretary of State to determine whether the Power of Attorneys are properly executed or shall the Secretary of State merely file the instruments whether they are properly executed or in proper form?

"7. If a person, partnership or corporation in complying with the provisions of Section 15 $\frac{1}{2}$, Article 666 of the Penal Code and Section 12, Article 667 of the Penal Code desires to make the Secretary of State and his successors in office in their

official capacity their agent for service in Texas, does the Secretary of State have authority to act as their agent for service?

"If you answer question 7 in the affirmative, then please insert a provision to that effect in the Power of Attorney if it is necessary to make corrections in the instrument.

"If in your opinion the attached form is not a substantial compliance with the law, then we would appreciate it if you would prepare one that in your opinion does substantially comply with the law."

". . . . "

"House Bill No. 709, Sec. 2. The power of attorney required by this Act shall, in addition to stating the name and address of the agent, also stipulate that said agent is appointed as a corporation's service agent in Texas, and that said foreign corporation consents to the service of process upon said agent and that he shall be deemed as the service agent of said corporation for all intents and purposes as contemplated by the statutes requiring such designation and appointment; said power of attorney shall be acknowledged by the president or vice president, attested by the secretary and acknowledged in the manner and form as is required in acknowledgment of deeds in the State of Texas; said power of attorney shall, when executed, be filed in the office of the Secretary of State and shall become a part of the records in said office."

Paragraph (2) under section 15 $\frac{1}{2}$ of Senate Bill 117 and Sec. 12 of Art. 667, P. C., provide that the certificate of appointment of the service agent show that the said service agent is a resident within this state, give the street address and business of such agent. The power of attorney under Section 2 of House Bill 709 does not require that the business of the agent be given.

"House Bill No. 709. Sec. 1. No foreign corporation shall transact or do any business in this State without first having filed in the office of the Secretary of State a power of attorney designating some individual who is a resident citizen of this state, as its service agent, upon whom process may be served in all suits, proceedings and causes of action, pending or hereafter filed in this state, in which said foreign corporation is a party, or is to be made a party."

In answer to your first and second questions, it is the opinion of this department that where a foreign corporation, with or without a permit to do business in Texas, is an applicant for a Non-Resident Seller's Permit under the Texas Liquor Control Act, it is required to file a power of attorney appointing a service agent in compliance with Sec. 15 $\frac{1}{2}$ of Art. 666, P.C., and Sec. 12 of Art. 667, P.C. The filing in the office of the Secretary of State of a power of attorney, designating a service agent, under the provisions of House Bill 709, is not a compliance with Sec. 15 $\frac{1}{2}$ of Art. 666, P.C., and Sec. 12, of Art. 667, P.C.

In answer to your third question, it is the opinion of this department that where a corporation appoints a service agent the power of attorney should be signed by the president or vice president and attested by the secretary and acknowledged.

In answering your fifth question, it is the opinion of this department that where the form appointing said service agent shows on its face that the Board of Directors has authorized the president or vice president to appoint the service agent and is properly sworn to, it is not necessary that a copy of the minutes of the Board of Directors accompany the power of attorney.

In answer to your sixth question, it is the opinion of this department that it is the duty of the Secretary of State to determine whether the powers of attorney are properly executed before they are filed.

In answer to your seventh question, it is the opinion of this department that where a person, partnership or corporation appoints a service agent in compliance with the provisions of Sec. 15 $\frac{1}{2}$, Art. 666, P.C. and Sec. 12, Art. 667, P.C., desires to make the Secretary of State of Texas and his successors in office his or its agent for service in Texas, the Secretary of State has authority to act as such agent for service.

We have carefully studied the form, "CERTIFICATION OF APPOINTED RESIDENT STATE AGENT," which you submitted for approval and we are of the opinion that said form is not a substantial compliance with Sec. 15 $\frac{1}{2}$, Art. 666, P.C., and Sec. 12, Art. 667, P.C. We are attaching hereto a form approved by this department as being in compliance with Sec. 15 $\frac{1}{2}$, Art. 666 P.C., and Sec. 12, Art. 667, P.C.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/ Jesse Owens
Jesse Owens
Assistant

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Enclsoure
APPROVED SEP 14, 1943
s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee
By GWE Chairman