

board of education of the former village school district is abolished, and the position of its clerk is likewise abolished. The newly created board of education should organize as such, under the provisions of Section 4747, General Code, and may, in so doing, appoint a new and different clerk from the one who had been previously appointed as clerk for the former village board of education.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2242.

CORPORATION—DOMESTIC—SHALL APPOINT TWO NATURAL PERSONS TO RECEIVE PROCESS NOTICES, WHEN LESS THAN TWO OFFICERS ARE RESIDENTS OF COUNTY CONTAINING ITS PRINCIPAL OFFICE—PENALTY FOR FAILURE TO APPOINT.

SYLLABUS:

It is the duty of every domestic corporation which has less than two of its officers or directors resident of the county in which the principal office of the corporation is located, to appoint immediately two natural persons who are residents of such county as its agents upon whom process or tax notices or demands may be served. It is further the duty of such corporation to report the names and addresses of its officers and directors within the county and, in case there are less than two thereof, the names and addresses of statutory agents, together with written consent to the service of process upon such officers, directors or agents. Failure of the corporation to select or appoint such officers, directors or agents or to make a report, upon written request therefore, subjects the corporation to a penalty.

COLUMBUS, OHIO, June 18, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication, as follows:

“Having reference to Section 129 of the general corporation act you will note that the section requires the naming of agents by corporations not having at least two of its officers or directors residents in the county in which is located the corporation’s principal place of business. However, the consent to service and designation of agent is required to be made to the Tax Commission at the time that the corporation makes its annual report. This will mean that frequently a year will elapse during which time certain corporations will not have named agents. It not infrequently happens that during the first year of the life of a corporation it is most frequently in litigation.

While it is possible under the section in question to serve the Secretary of State, yet on the other hand the department has had a number of requests for advice as to whether or not agents may be designated prior to the company’s first annual report.

Your opinion is requested as to whether or not it is possible for a corporation to make such designation at a time other than filing of the annual report and also whether or not the designation can be made by a filing made in this office, or on the other hand whether designation can be made with the Tax Commission.

This matter has been discussed with a representative of the Tax Commission as a matter of common interest to both departments. It is requested that copy of your opinion be mailed as well to the Tax Commission, attention of Mr. Reed."

Section 8623-129, General Code, to which you refer, is as follows:

"Every domestic corporation shall maintain an office at the place in this state where its principal office is to be located, and, unless two of its officers or directors are residents of the county in which such office is located, shall appoint two natural persons who are residents of such county as its agents upon whom process or tax notices or demands may be served. Upon the death, resignation or removal of any such officer, director or agent, a new or successor officer, director or agent shall forthwith be elected or appointed so that at all times there shall be two natural persons resident of such county upon whom process or tax notices may be served.

Annually at the time of filing its report with the Tax Commission, or as a part of such report, every domestic corporation shall report to the Tax Commission the place and address of its office in this state, and the names and addresses of its officers and directors who are residents of such county, and, if there are less than two such officers or directors, the names and addresses of two natural persons resident of such county upon whom process of tax notices may be served, together with its written consent that any process or tax notice may be served upon any such officer, director, or agent until such time as a successor to such officer, director or agent shall be elected or appointed.

The street and number or a particular description of every address shall be given.

Such report shall be in such form as the Tax Commission may prescribe.

Any corporation which shall fail for ten days after written request to elect or appoint such officers, directors, or agents, or any of them, as herein provided, or to file any such report, shall be subject to a penalty of one hundred dollars and the further penalty of ten dollars for every day after such request that such default shall continue, to be paid to the person making such request.

If process cannot be otherwise served on any domestic corporation, it may be served on any such officer, director, or agent and if process cannot be served on any such officer, director or agent, and if any domestic corporation shall have failed to designate an agent or agents for service of process or any such officer, director or agent cannot be found at the designated office of such domestic corporation, service of process upon such corporation may be had by serving the Secretary of State by personally delivering to or leaving with him or an assistant Secretary of State, duplicate copies of such process and paying to the Secretary of State a fee of \$5.00, which shall be included in the taxable costs of the suit, action or proceeding. Upon the receipt of such process and fee the Secretary of State shall forthwith, by telegraph, give notice of the service of such process to the corporation at its principal office in this state, and shall forward to such office, by registered mail with request for return receipt, a copy of such process; provided, however, that failure to give such notice or to mail copies of such process shall not affect the validity of the service."

I believe you have failed to distinguish between the designation of the statutory agents upon whom process may be served and the report of such action to the Tax Commission. You will observe that the first paragraph of the section makes it the mandatory duty of every domestic corporation to maintain an office where its principal office is to be located and also to appoint statutory agents in case there are not two of its officers or directors resident of the county in which the office is located. While the statute is silent as to the time this appointment shall be made, I believe the clear inference from the other provisions of the section is that the appointment shall be made at once when two officers or directors do not reside in the county. That is to say, if a new corporation has not two officers or directors in the county where its offices are located, it is its duty at once to appoint statutory agents, and if any other corporation has had two officers or directors in the county, and for any reason one of them ceases to live in the county, it becomes the duty of the corporation immediately to appoint statutory agents.

The second paragraph of the section merely requires the report of the names and addresses of the officers and directors or the statutory agents. This does not mean that the designation of the agents cannot or should not be made prior to the date of the filing of the report. It is true that the section also requires the filing of a written consent to the service, but I do not believe that this provision does more than simply make more effective the service upon those who are officially reported as being the agents for service. That is, the corporation would, after filing its written consent, be estopped to deny the validity of the service upon such designated persons.

My conclusion is strengthened by the language of later portions of the section. Thus any person may make written request of the corporation to designate those upon whom process shall be served and the corporation is subject to a penalty for failing so to do, such penalty to be paid to the person making the request. Quite obviously this action could be taken prior to the date of filing the first report with the Tax Commission. You will further observe that the corporation becomes liable to a penalty for either failing to make the election or appointment or filing a report as to the appointment, thus clearly distinguishing between the two. It is true that the latter portion of the section provides a means whereby service may be made upon the Secretary of State, in case of failure to designate an agent or agents for service of process and in other instances. This is an additional method by which service may be had but it does not relieve the corporation of its initial duty to make the designation as thereinabove set forth. You inquire whether or not a corporation may make a designation at a time other than at the time of filing the annual report and whether this designation may be made by filing in your office or with the Tax Commission. The statutes nowhere provide for any filing in your office as to this designation, nor does it provide for any report to the Tax Commission other than that which shall be made at the time of the filing of its regular report to such commission. I see no objection, if a corporation so desires, to the filing of information as to the statutory agents either with your office or with the Tax Commission. In view of the lack of statutory authority therefor, however, I feel that there would be no way in which a fee could be charged for such filing. Such information might be made available to any one interested, but I suggest that, in case of any one seeking to bring an action against the corporation, his purposes could be served as well by service had upon you where he is unable to find officers or agents within the county upon whom to make service.

Specifically answering your question, I am of the opinion that it is the duty of every domestic corporation which has less than two of its officers or directors resident of the county in which the principal office of the corporation is located, to appoint immediately two natural persons who are residents of such county as its agents upon whom process or tax notices or demands may be served. It is further the

duty of such corporation to report the names and addresses of its officers and directors within the county and, in case there are less than two thereof, the names and addresses of statutory agents, together with written consent to the service of process upon such officers, directors or agents. Failure of the corporation to select or appoint such officers, directors or agents or to make a report, upon written request therefor, subjects the corporation to a penalty.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2243.

APPROVAL, BONDS OF LOGAN COUNTY (ASPINALL DITCH No. 511)—
\$2,400.00.

COLUMBUS, OHIO, June 18, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2244.

STREETS—PETITION FOR IMPROVEMENT—SECTION 3836, GENERAL
CODE, DISCUSSED.

SYLLABUS:

A petition may now be filed under Section 3836 of the Code for the improvement of a street and the assessment of the entire cost thereof by three-fourths in number of the owners of property to be assessed, and such petition will confer jurisdiction upon council to proceed as authorized by such section.

COLUMBUS, OHIO, June 18, 1928.

HON. D. A. BAIRD, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

“On account of the joining of the county commissioners with municipalities for the improvement of roads and streets in such municipalities, the question has arisen as to the proper interpretation of Section 3836 of the General Code as amended in 112 Ohio Laws, page 206.

The particular question is, what is meant by the language used in said Section 3836 (112 Ohio Laws, page 206), as follows: ‘Three-fourths in interest of the owners * * * of property abutting upon a street, alley, etc.’

Prior to the amendment referred to, Section 3836 read as follows: