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FOREIGN CORPORATION ORGANIZED FOR PROFIT—CANNOT BE GRANTED A LICENSE TO TRANSACT BUSINESS IN OHIO IF EITHER THE WORD "ENGINEER" OR "ENGINEERING" FORMS A PART OF ITS CORPORATE NAME—TIME WHEN USE OF SUCH NAME WAS AUTHORIZED IN THE STATE OF ITS INCORPORATION OF NO EFFECT—AUGUST 6, 1943, EFFECTIVE DATE OF AMENDMENT OF SECTION 1083-18 G. C.

SYLLABUS:

From and after the effective date of the amendment of Section 1083-18, General Code, to-wit, August 6, 1943, a foreign corporation organized for profit cannot be granted a license to transact business in Ohio if either the word "engineer" or "engineering" forms a part of its corporate name, regardless of the time when the use of such name was authorized in the state of its incorporation.

Columbus, Ohio, February 8, 1945

Hon. Edward J. Hummel, Secretary of State
Columbus, Ohio

Dear Sir:

You have submitted for my consideration correspondence relative to the application of a corporation known as "The ——— Engineering Company", formed under the laws of Michigan on November 3, 1938, for the purpose of manufacturing and dealing in machinery, tools and equipment, fuels and supplies, for a license to transact business in Ohio. You inquire whether the license should be refused because of the inclusion of the word "engineering" in the name of the company, which is forbidden by Section 1083-18, General Code, as amended, as to corporations formed after August 6, 1943, the effective date of the amendment.

The right of a corporation incorporated under the laws of a state to carry on business in another state comes into existence only when granted by such other state under conditions which it may see fit to impose. As stated by Williams, J., in State ex rel. v. Life Ins. Co., 47 O. S. 167, 179:

> "There can be no doubt of the power of the legislature to prescribe the terms and conditions upon which foreign corporations may be admitted to do business in this state. It was held in Western Union Telegraph Company v. Mayer, 28 Ohio St., 521, that 'Foreign corporations can exercise none of their franchises or powers within this state, except by comity or legislative consent. That consent may be upon such terms and conditions as the general assembly under its legislative power may impose.' It was said by Johnson, J., in the opinion in that case, that foreign corporations 'may be excluded from the state altogether, or admitted on such terms as the state may prescribe.' "

To like effect see 23 Am. Juris. p. 204, where it is said:

> "By means of statutes, constitutional provisions, *or a settled policy of the state,* each sovereignty has undoubted power to deny to foreign corporations, or to such of them as fail to comply with the valid conditions it prescribes, the right to do business within its borders, and has equal power, when consenting to their admission, to grant the right subject to any terms or conditions it may deem proper to impose, * * * ." (Emphasis added.)

I do not overlook the proposition that a state cannot deny to a foreign corporation rights which may be guaranteed to it by the federal constitution. But nothing in that constitution confers any right on a corporation to enter another state for the purpose of "doing business" therein as that phrase is generally understood. Speaking further on that subject, it is said in 23 Am. Juris. p. 206:

> "Moreover, this power with respect to foreign corporations is justified as a necessary corollary to the sovereign power to grant or refuse charters of incorporation. Under any other view the state would be defenseless against an influx of irresponsible foreign corporations to engage in activities of a nature, in a manner, or to an extent not contemplated by the *state's policy* as to corporate activity in those fields." (Emphasis added.)

In 10 O. Jur. p. 1155, it is stated:

> "This right of foreign corporations to exercise their corporate powers in jurisdictions other than those of their creation exists solely by the comity of states, which is presumed to suffer such exercise where it is not denied or qualified by law. In other words, foreign corporations can exercise none of their powers or franchises within Ohio, except by comity, and then only when they conform to the conditions imposed by the Ohio statutes in respect to foreign corporations."

Again, speaking of the same subject at page 1158, it is said:

> "A further limitation is that the powers to be exercised must not conflict with the settled public policy or the statutes of Ohio. The rule may thus be stated: Foreign corporations may transact business in Ohio not inconsistent with Ohio laws, obnoxious to her public policy, or against the interest of her citizens; comity is never extended where the existence of the corporation or the exercise of its powers is prejudicial to the interests or repugnant to the policy of the state. In other words, powers conferred by a charter cannot be exercised in a foreign state whose policy is thereby violated. It is subject to, and restricted by, the laws and regulations of the state where it is doing business."

Citing Newburg v. Petroleum Co., 27 O. S. 343; Ewing v. Savings Bank, 43 O. S. 31; State ex rel. v. Life Ins. Co., 69 O. S. 317; State ex rel. v. Laylin, 73 O. S. 90.

I consider the matter of state policy important in ascertaining the meaning and effect of the statutes relating directly to the subject presented by your inquiry. Again referring to 23 Am. Juris., it is said at page 81:

> "The public policy of the state with respect to the recognition and admission of foreign corporations may be ascertained by reference to the *general course of legislation of the state,* either by prohibiting or enabling acts *or by its general course of legislation on a given subject,* or it may be deduced from the settled adjudications of its highest court and from the constant practice of its government officers." (Emphasis added.)

Accordingly we look to the enactments of our Legislature to determine what, if any, policy has been established. Sections 1083-1 to 1083-26 General Code, relate to the practice of the professions of engineering and surveying. Section 1083-1 reads as follows:

> "That in order to safeguard life, health and property, any person practicing or offering to practice the professions of engineering or of surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice the professions of engineering or of surveying, in this state, *or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer* or a surveyor, unless such person has been duly registered or exempted under the provisions of this act."
>
> (Emphasis added.)

The above section manifestly makes it impossible for a corporation, domestic or otherwise, to practice engineering, and no person may use any business name that suggests that he is a professional engineer unless he is duly registered or exempted. This brings up the question at once: if no individual can use in his business the word "engineer" or "engineering", how can a corporation which is forbidden to practice engineering come into the state using the forbidden words, no matter when it was organized in its own state or what name it was permitted to bear there?

Prior to its amendment by the 95th General Assembly, Section 1083-18, General Code, read as follows:

"A firm, or a co-partnership, or an association may engage in the practice of professional engineering or surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state."

As amended (120 O. L. 145), effective August 6, 1943, it reads:

"A firm, or a co-partnership, or an association may engage in the practice of professional engineering or surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state.

No corporation shall hereafter be granted a charter to engage in the practice of professional engineering or surveying, *nor shall any corporation hereafter formed use or assume a name involving the word 'engineer' or 'engineering'* or any modification or derivative of such term except a non-profit membership corporation." (Emphasis added.)

In connection with this section we should consider Section 8625-5, General Code, being a part of the foreign corporation act, which reads in part:

"No application for a license shall be accepted for filing if it appears that the name of the foreign corporation is prohibited by law or is not readily distinguishable from the name of every other corporation, domestic or foreign."

Certainly these statutes disclose plainly the policy of the state relative to corporations either domestic or foreign, not merely in excluding all such corporations from practicing engineering in Ohio but preventing the use of a name which would lead the public to assume that they are authorized to do so.

Note that no Ohio corporation is "hereafter" to be allowed to organize with the word "engineering" attached to its name. But it is argued that a foreign corporation knocking at our door may come in and start its career in Ohio bearing the objectionable name. When the Legislature used the words "hereafter formed" in Section 1083-18, General Code, it was of course dealing solely with Ohio corporations. It could not regulate the name under which a foreign corporation might be formed in its own state. This chapter has nothing to do with the chapter relating to foreign corporations. It is a part of the chapter regulating the practice

of engineering. Are we to read into that statute an implication to the effect that a foreign corporation may come into Ohio "hereafter" bearing a name which we forbid a domestic corporation to assume? The words "hereafter formed" as used do not, in my opinion, have the slightest reference to the creation or the time of creation of a corporation formed in another state.

Is it not a fair interpretation of this situation to say that a foreign corporation starts its Ohio life on the day it secures its license, just as truly as a domestic corporation starts its life in Ohio the day it files its articles of incorporation? Were it otherwise, we could have the spectacle of two business organizations asking on the same day for permission to do business as corporations in Ohio; one composed of our own citizens, the other of citizens of another state. Both seek to do the same business and both propose to come in with the word "engineering" in their corporate names. The one from Ohio is denied a charter, the one from abroad is granted a license. To permit such a result would certainly make of the law a mockery and would be entirely contrary to the settled policy of the state.

A well established rule of construction of statutes is that stated in 37 O. Jur. p. 677:

> "Authority is not wanting to the effect that in the interpretation of ambiguous statutes the courts may, among other matters, take into consideration the settled policy of the state in so far as it may throw light on the legislative intention. * * * Technical rules of construction should not, it has been declared, be permitted to overthrow the manifest and settled policy of the state. Hence, a construction which is contrary to the previously established public policy should be avoided. If a statute may be construed in two ways, one in accord with the public policy of the state and the other in conflict therewith, the former construction is favored."

Numerous cases are cited in support of that proposition.

In consideration of the foregoing, and in specific answer to your question, it is my opinion that from and after the effective date of the amendment of Section 1083-18, General Code, to-wit, August 6, 1943, a

foreign corporation organized for profit cannot be granted a license to transact business in Ohio if either the word "engineer" or "engineering" forms a part of its corporate name, regardless of the time when the use of such name was authorized in the state of its incorporation.

Respectfully,

HUGH S. JENKINS
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