

4188.

FOREIGN CORPORATION—QUALIFYING AS TRUST COMPANY—CERTIFICATE FROM TAX COMMISSION NEED NOT BE FILED WITH SUPERINTENDENT OF BANKS.

SYLLABUS:

Since the enactment of the "Foreign Corporation Act" (Sections 8625-1 to 8625-33, inclusive, of the General Code), no certificate of the Tax Commission as to the compliance of a foreign trust company desiring to become qualified to do business in Ohio within the foreign corporation laws of this state need be filed with the superintendent of Banks, in order to comply with the provisions of Section 710-152, General Code.

COLUMBUS, OHIO, March 28, 1932.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—Your request for opinion reads as follows:

"Section 710-152 of the General Code of Ohio, sets forth that every foreign trust company doing a trust business in this State shall annually within 30 days after complying with all the provisions of law in relation to foreign corporations transacting business within this State, file with the Superintendent of Banks a certificate of the Tax Commission of Ohio as to such compliance as a prerequisite of its right to apply to the Superintendent of Banks for a license to transact or continue to transact trust business in the State of Ohio.

In former years we have, before issuing such license to foreign trust companies, received from the Tax Commission of Ohio certification that said companies had complied with Sections 178 and 184 of the General Code, of Ohio. These sections of the General Code, I am informed, were repealed at the last session of the General Assembly of Ohio.

The Foreign Corporation Act, as enacted in 1931, provides in Section 8625-3 of the General Code of Ohio that said act shall not be applicable to corporations engaged in this State solely in interstate commerce, nor to banks, trust companies, and certain other corporations.

By reason of the repealing of Sections 178 and 184 of the General Code of Ohio and the enactment of Section 8625-3, the question now arises as to what certification, if any, is necessary to come to this Department from the Tax Commission by reason of the provisions of Section 710-152 of the General Code of Ohio, and I would, therefore, very much appreciate your opinion relative to the same."

This section, as you state, purports to require the procuring of a certificate from the Tax Commission, certifying that the foreign trust company desiring to comply with the provisions of the "Banking Act" with reference to foreign trust companies, has complied with "all the provisions of law in relation to foreign corporations transacting business within this state." Section 710-152 of the General Code, was enacted in the year 1919, at which time the provisions of the statutory law limiting the manner of qualification by a foreign corporation to do business in Ohio, were contained in Sections 178 to 194, both inclusive, of the General

Code. Under these provisions there was no exception of foreign trust companies (See former Section 188, General Code). The legislature, in 1931, repealed all of these sections with the exception of Sections 190-1, 193 and 194, and in their stead, enacted Sections 8625-1 to 8625-33, both inclusive, which sections are popularly known as "The Foreign Corporation Act." Section 8625-3, of this act, reads as follows:

"This act shall not apply to corporations engaged in this state solely in interstate commerce, nor to banks, trust companies, building and loan associations, title guarantee and trust companies, bond investment companies, insurance companies, nor to public utility companies engaged in this state in interstate commerce."

There are now no provisions for the qualification of foreign trust companies to do business in Ohio other than those contained in the Banking Act.

Sections 710-152 and Sections 178 to 184, both inclusive, had as their purpose to require certain acts of foreign corporations, including trust companies, desiring to do business within this state. The purpose of legislation should always be considered in the interpretation of statutes. The legislature in the enactment of the recent "Foreign Corporation Act", clearly evinced its purpose of not including foreign trust companies in its provisions and of not requiring foreign trust companies, desiring to qualify to engage in business within this state, to comply with conditions but rather to leave such corporations to the jurisdiction of the banking department.

As stated by Owens, Judge, in *Moore vs. Given*, 39 O. S., 661, 663:

"That the law does not require vain, absurd or impossible things of men is one of its favorite maxims; and it is the plain duty of the courts, in the interpretation of a statute, unless restrained by the rigid and inflexible letter of it, to lean strongly to that view which will avoid absurd consequences, injustice or great inconvenience; for none of these things can be presumed to have been within the legislative intent."

See also *Hill vs. Micham*, 116 O. S., 549.

If Section 710-152 of the General Code, is to be interpreted literally it would be to require the Tax Commission to certify to the state banking department that certain facts which were already known by such department to have been done had in fact been done.

I am therefore of the opinion that the legislature, by the enactment of Section 8625-3, General Code, provided that the "Foreign Corporation Act" did not apply to trust companies and by the repeal of Sections 178 and 184, both inclusive, of the General Code, also rendered inoperative the provisions contained in Section 110-152, General Code, requiring a certificate from the Tax Commission that a foreign trust company had complied within the "foreign corporation laws" of the state.

Specifically answering your inquiry, I am of the opinion that since the enactment of the "Foreign Corporation Act" (Sections 8625-1 to 8625-33, inclusive, of the General Code), no certificate of the Tax Commission as to the compliance of a foreign trust company desiring to become qualified to do business in Ohio

with the foreign corporation laws of this state need be filed with the superintendent of banks, in order to comply with the provisions of Section 710-152, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4189.

BUDGET LAW—PROVISION THAT TAX BUDGET BE DRAWN BY
JULY 15th, CONSTRUED AS DIRECTORY.

SYLLABUS:

The provision of section 5625-20, General Code, designating the 15th day of July as the date on or before which the taxing authority of a subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year, is directory; and a subdivision may adopt such budget on the 20th day of July after a hearing is had on such tax budget on public notice in the manner required by section 5625-22, General Code.

COLUMBUS, OHIO, March 28, 1932.

HON. CHARLES D. DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from you in which you request my opinion as to whether the terms of section 5625-20, General Code, providing for the adoption of a tax budget by the taxing authorities of the county and of the subdivisions thereof, are mandatory with respect to the time when such tax budget shall be adopted.

This section provides that "On or before the 15th day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year." In view of the provisions of this section, you inquire whether or not the county commissioners of a county after a public hearing thereon had pursuant to notice in the manner provided by law, would have authority to adopt a tax budget for the county on July 20, and on such date submit the same to the county auditor for presentation to the county budget commission.

As above noted, the question here presented is whether the provision of section 5625-20, General Code, with respect to the time when the tax budget to meet the expenses of the subdivision for the next fiscal year is to be adopted, is mandatory or merely directory. Touching the question here presented, it was held in the case of *Schick vs. City of Cincinnati*, 116 O. S. 16, as follows:

"Statutes which relate to the manner or time in which power or jurisdiction vested in a public officer is to be exercised, and not to the limits of power or jurisdiction itself, may be construed to be directory, unless accompanied by negative words importing that the act required shall not be done in any other manner or time than that designated."