

4247.

APPROVAL, BONDS OF VALLEY RURAL SCHOOL DISTRICT, SCIOTO COUNTY, OHIO, \$8,336.86.

COLUMBUS, OHIO, May 8, 1935.

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

4248.

APPROVAL, CONTRACT FOR HIGHWAY IMPROVEMENT IN BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, May 9, 1935.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*

4249.

MERGER—EFFECT OF MERGER OF FOREIGN CORPORATIONS UPON FEE PAYABLE TO SECRETARY OF STATE UNDER SECTION 8625-11 GENERAL CODE.

SYLLABUS:

Where the number of issued shares of a foreign corporation represented by property owned or used and business transacted in this state is increased as a result of another foreign corporation, heretofore qualified to do business in Ohio, merging with such corporation, in computing the fee based upon such increase under Section 8625-11, General Code, no deduction is authorized on account of such merging corporation having theretofore paid a fee based upon its issued shares being represented by property owned or used and business transacted in this state.

COLUMBUS, OHIO, May 10, 1935.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Your informal opinion is respectfully requested with respect to the following situation.

‘A’ Company is a Delaware corporation which secured license under the Ohio foreign corporation act on June 5, 1929, such license being at the present time in good standing. The company regularly filed the reports required by G. C. 8625-7, the greatest proportion of shares allocated to Ohio by such re-

ports being 1939 shares by the 1934 report, the fee on the increase for that year being paid as provided by law.

'B' Company, also a Delaware corporation, secured license in Ohio on June 5, 1929. This company also regularly made its reports under G. C. 8625-7 which reports for the years 1932 and 1933 showed 2000 of its issued shares allocated to Ohio (no fee being assessed on any reports by reason of no increase in proportion having occurred.)

On Sept. 22, 1934 a certificate of merger of the two corporations above named, properly certified by the secretary of state of Delaware was filed in this office as an amendment to the articles of incorporation of 'A' Company, the 'B' Company being merged into that company. Subsequently and prior to Dec. 31, 1934 the license of the 'B' Company under the foreign corporation act was formally surrendered.

'A' Company, the corporation which retained its corporate identity as a result of the merger, has filed with this office its report as of Jan. 1, 1935 as provided by G. C. 8625-7. This report (as a result of the merger) shows 4000 issued shares, practically all of which are allocated to Ohio. The company has raised the question regarding the computation of the fee due on this report by claiming that it should be allowed as a deduction under the language of G. C. 8625-11 the sum of the prior proportion of each of the constituent companies, i. e. 2000 shares plus 1939 shares, rather than simply the 1939 shares previously represented by 'A' Company.

Our specific inquiry is whether in your opinion the language of G. C. 8625-11 would authorize us to allow as a deduction in computing the fee the previous proportion of shares of the one company or the sum of the previous proportion of shares of both companies."

Section 8625-7, General Code, requires each foreign corporation for profit licensed to transact business in this state to file an annual report as therein set forth, showing among other things the location and value of its property owned or used within and without the state, the total amount of business done within and without the state at the beginning of its current annual accounting period and the number of its issued shares. Section 8625-8, General Code, requires the Secretary of State to ascertain annually the number of issued shares of such foreign corporation represented by property owned or used and business transacted in this state at the beginning of its current annual accounting period. Section 8625-9, General Code, provides as follows:

"A foreign corporation not heretofore licensed to transact business in this state shall pay to the secretary of state, as the initial installment of the license fee, a fee based on the number of its issued shares represented in this state, as shown by its first report filed under this act and determined in the manner hereinbefore set forth, and such fee shall be the same as the fee which a domestic corporation, having authority to issue the same number of shares as such foreign corporation has represented in this state, is required to pay on filing its original articles. Upon the payment of such fee, the corporation shall be authorized to have such number of shares represented in this state."

Section 8625-10, General Code, relates to the qualification of issued shares of foreign corporations licensed at the time the sections in question went into effect, August 6, 1931, and is not pertinent here.

Section 8625-11, General Code, is, I believe, dispositive of your inquiry. It provides as follows:

"In the event that any report filed under this act subsequent to the first report shall disclose that any foreign corporation has represented in this state a number of issued shares in excess of the number theretofore determined to be represented, the corporation shall pay to the secretary of state an additional installment of the license fee based upon such number of additional shares computed as follows:

The secretary of state shall first compute a fee upon the entire number of issued shares of such corporation represented in this state as shown by such report on the basis set forth in section 8625-9 of the General Code, and shall then compute a fee on the same basis on the number of issued shares which such corporation has been authorized theretofore to have represented in this state, and the fee payable shall be the difference between such two fees so computed."

It is observed that the foregoing section requires the payment of a fee as therein set forth when the annual report shows an increase in the number of issued shares of a foreign corporation represented by property owned or used and business transacted in this state, without any exceptions as to whether or not some other corporation which might have merged with the reporting corporation had already paid a fee computed upon such increased shares. The language of the section is clear and unambiguous. The requirement in the first paragraph is "the corporation shall pay to the Secretary of State an additional installment of the license fee based upon *such* number of additional shares." The additional shares upon which the additional installment of the license fee is based in the event of an increase in the shares represented in this state, can only be the additional shares shown by the report of the reporting corporation. The reference again in the second paragraph of the foregoing section to "such corporation" is clearly to the corporation making the report and not to some other corporation. It would undoubtedly be competent for the legislature to authorize a deduction under such circumstances as are set forth in your communication, but until this is done I find no authority therefor. In the case of a merger the individual corporate entities concerned may not be lost sight of. 'A' Company has, as a result of this merger, retained its corporate identity and in the absence of specific provision relating to such transaction, is in the same position as though it had increased the number of its shares represented by property owned or used and business transacted in this state either by increasing its outstanding shares or increasing the proportion of its property and business in Ohio. Compare my Opinion No. 4220, relating to a corporation merger as affecting registration of motor vehicles.

Specifically answering your inquiry, it is my opinion that where the number of issued shares of a foreign corporation represented by property owned or used and business transacted in this state is increased as a result of another foreign corporation, heretofore qualified to do business in Ohio, merging with such corporation, in computing the fee based upon such increase under Section 8625-11, General Code, no deduction is authorized on account of such merging corporation having theretofore paid a fee based upon its issued shares being represented by property owned or used and business transacted in this state.

Respectfully,
JOHN W. BRICKER.
Attorney General.