

516.

FOREIGN CORPORATION OPERATING PUBLIC UTILITY—WHEN EXEMPT FROM FRANCHISE TAX.

SYLLABUS:

A foreign corporation operating a public utility in Ohio, whose annual report filed in accordance with the provisions of law pertaining to the excise tax, shows that there is no amount due for such tax, is by the terms of Section 5503 of the General Code of Ohio exempt from the provisions of law relative to the franchise tax.

COLUMBUS, OHIO, May 20, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

“The Commission has been studying your opinion Nos. 206 and 379. One further question suggests itself.

In opinion No. 206 it is held that a corporation organized in another state but operating a public utility in Ohio is exempt from excise tax in this state unless its report shows intrastate earnings.

How then shall we apply Section 5503 of the General Code which provides that:

‘An incorporated company, whether foreign or domestic, owning and operating a public utility in this state, and as such required by law to file reports to the tax commission *and* to pay an excise tax * * * shall not be subject * * *’.

to the Dempsey act.

In the case therefore of a foreign utility company operating in this state which by reason of its method of operations is required to report only but is not required to report *and* pay an excise tax, is it the duty of this commission to require it to report and pay a franchise fee under the Dempsey act the same as other foreign corporations which own property and do business in Ohio?”

The portion of Section 5503 of the General Code which you have not quoted has some bearing upon your question. The section in full is as follows:

“An incorporated company, whether foreign or domestic, owning and operating a public utility in this state, and as such required by law to file reports to the tax commission and to pay an excise tax upon its gross receipts or gross earnings as provided in this act, and insurance, fraternal, beneficial, building and loan, bond investment and other corporations, required by law to file annual reports with the superintendent of insurance, shall not be subject to the provisions of Sections one to five inclusive of this act.”

You will note that the exemption from the franchise tax is made contingent upon the fact that the utility company is required by law to file reports to the Tax Commission and to pay an excise tax upon its gross receipts or gross earnings *as provided in this act*.

In my former opinion No. 206, rendered March 19, 1927, it was held, as you state, that a corporation organized in another state but operating a public utility in Ohio

is not liable to pay the minimum excise tax when no intrastate business is shown. That opinion also held that such a corporation was required to file the report of its earnings under the provisions of Section 5472 of the General Code so that it would affirmatively appear that no intrastate business was done. It therefore appears that such a corporation is required to file reports irrespective of whether or not it has intrastate business, and it also is required to pay an excise tax *as provided in this act*.

Since, however, my previous interpretation of the terms of the act has been that no minimum fee is payable where there is no intrastate business, it is readily apparent that a company is fully complying with the law as to public utilities when it has filed its report, which, upon proper investigation, establishes that there is no tax due.

I have no difficulty in reaching the conclusion that the exemption from the franchise tax provided by Section 5503 of the General Code in favor of public utilities is applicable to a foreign public utility, which is, by the terms of the excise tax law, not required to make any payment thereunder.

Respectfully,
EDWARD C. TURNER,
Attorney General.

517.

COUNTY BOARD OF EDUCATION—ELECTION OF A SUPERINTENDENT OF SCHOOLS AT A SPECIAL MEETING IS NOT LEGAL.

SYLLABUS:

The election of a superintendent of schools by a county board of education at a special meeting is not legal.

COLUMBUS, OHIO, May 20, 1927.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

“I am writing for your opinion as to the legality of the election of a superintendent of schools by a county board of education at a special meeting not called for that purpose.

You may assume the facts which give rise to this question to be substantially as follows:

Our county board of education under General Code, Section 4733, has set the second Monday of each month as the date for holding its regular monthly meetings. We will assume that the regular monthly meeting was not held on April 11, 1927. That being the case the Secretary of the board of education wrote a letter to all members stating that it appeared that it would be convenient for the members to meet on Wednesday, April 20th, and unless he heard to the contrary the April meeting would be held at that time. The object and purpose of the meeting was not stated in the notice.

Assuming further that at the meeting held on April 20th, all members were present and proceeded to and did elect a superintendent of schools; the question then arises whether the meeting of the Board was a legal