

resolution would have been the same had the officer receiving the compensation not voted, his voting does not render the proceedings illegal. See *Schaffhäuser vs. Arnholt and Schaefer Brewing Company*, 218 Pa. St., 298; 11 Ann. Cases, 773 n.

In view of the holding of the Supreme Court in the case of *Briggs vs. Grocery Company*, *supra*, where this rule is applied to the directors of a private corporation, I believe the courts would apply it with equal vigor where the question arose in connection with matters involving public officers and boards, even in the absence of any statute on the question. In the instant matter, this common law rule is supported by the provisions of Section 12932, General Code, which prohibits a member of a board of education from acting in a matter in which he or she is personally interested and provides that anyone who does so act shall be fined not less than \$25.00 nor more than \$500.00 or imprisoned not more than six months or both.

In construing the provisions of this statute, it should be borne in mind that it is a penal statute, and should therefore be strictly construed. There is some force to the contention that when read in the light of the provisions of Section 4757, General Code, with which it clearly is in *pari materia*, it was not the intention of the legislature to prohibit a member of a board of education from participating in the election of himself as clerk of a board of education and in the fixing of a salary for that office. However, in the light of the common law rule discussed above, I am of the opinion that Section 4757, General Code, does not serve to abrogate this rule as applied to the election of a clerk of a board of education and the fixing of his salary, and that when a member of the board of education participates in such action he is acting in a matter in which he is pecuniarily interested, within the prohibition of Section 12932.

I am therefore of the opinion in specific answer to your question, that where a member of a city, exempted village, village or rural board of education is selected clerk of such board by his own vote, which was necessary to give him a majority, there is no election. I am also of the opinion that where a member of a board of education is selected clerk of the board by a majority vote of the board which does not include the vote of the member so selected, the member so selected may not participate by his vote in the fixing of a salary for himself. In either case, if his vote is not necessary to his selection as clerk or the passage of a resolution fixing his salary, and the result would have been the same had he not voted, his vote does not render the proceedings void.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4105.

FOREIGN CORPORATION—LICENSE REVOKED—REQUIRED TO AGAIN QUALIFY TO DO BUSINESS BEFORE IT CAN FILE CERTIFICATE OF VOLUNTARY SURRENDER OF LICENSE.

SYLLABUS:

A foreign corporation, whose license to do business within this state has been cancelled, by virtue of the provisions of Section 5509 of the General Code, is required to comply with the provisions of Section 5511 of the General Code, and become again qualified to do business in this state before it can file the certificate of voluntary surrender of license, by virtue of the provisions of Section 8625-20, of the General Code.

COLUMBUS, OHIO, February 27, 1932.

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

DEAR SIR:—This will acknowledge receipt of your request for opinion which reads as follows:

“Your attention is directed to Section 8625-20 providing for the surrender of license by a foreign corporation.

Is it necessary that a foreign corporation, whose certificate of authority under the foreign corporation act has been cancelled on order of the Tax Commission, be reinstated under Section 5511 of the General Code before filing the certificate of voluntary surrender of license?

In passing, your attention is called to the fact that previous to the enactment of present Code Section 8623-79, domestic corporations were not permitted to file voluntary dissolution after cancellation of articles had occurred without first reinstating before making the voluntary filing.”

Section 8625-20 of the General Code, referred to in your inquiry, reads as follows:

“A foreign corporation may surrender its license by filing with the secretary of state a certificate of surrender signed by its president, vice-president, secretary, or treasurer, setting forth:

- (1) The name of the corporation and of the state under the laws of which it is incorporated;
- (2) that it surrenders its license;
- (3) the address to which the secretary of state may mail any process against such corporation that may be served upon him, and any other notices, certificates or statements.

For filing such certificate of surrender the corporation shall pay to the secretary of state a filing fee of ten dollars.

Upon the filing of such certificate the secretary of state shall cancel the license of such corporation and shall make a notation thereof upon his records and shall mail to the corporation a certificate of his action so taken.

The surrender by a corporation of its license shall not affect any pending action nor any cause of action upon any liability or obligation of such corporation incurred within this state or arising out of business transacted in this state prior to the filing of such certificate.”

Section 5511 of the General Code, in so far as material to your inquiry, reads as follows:

“Any corporation whose articles of incorporation or license certificate to do or transact business in this state, has expired or has been cancelled or revoked by the secretary of state, as provided by law for failure to make any report or return or to pay any tax or fee, upon payment to the secretary of state of any additional fees and penalties required to be paid to him, and upon the filing, with the secretary of state, of a certificate from the tax commission that it has complied with all the re-

quirements of law as to franchise or excise taxes, fees or penalties due thereon for each and every year of its delinquency, and upon the payment to the secretary of state of an additional fee of ten dollars, shall be reinstated and again entitled to exercise its rights, privileges and franchises; provided, however, that if the reinstatement be not made within two years from the date of the cancellation of its articles of incorporation or date of the cancellation or expiration of its license to do business, and it appears that articles of incorporation or license certificate shall have been issued to a corporation of the same or similar name, the applicant for reinstatement shall be required by the secretary of state as a condition prerequisite to such reinstatement, to amend its articles by changing its name. A certificate of reinstatement may be filed in the recorder's office of any county in the state, for which the recorder shall charge and collect one (\$1.00) dollar."

Section 5509, of the General Code, setting forth the effect of the cancellation of a license to do business, which section is in *pari materia*, reads in part, as follows:

"Thereupon all the powers, privileges and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority, shall cease and determine, subject to the provisions of section 8623-80 of the General Code. * *"

The mere fact that a foreign corporation has not procured a license to do business in Ohio does not in and of itself render the acts of such corporation void, but only deprives it of certain benefits and rights conferred by the "Foreign Corporation Act" and makes the doing of business a misdemeanor (See paragraphs 2 and 3 of Section 8625-25 of the General Code). The revocation of the license definitely puts such certificate and all authority, privilege or benefit held under it out of existence. Such act terminates the license and takes it away from the corporation. The language of the statute specifically gives such effect. The word "revoke" is not a technical word but an ordinary word, meaning to rescind. The license having been rescinded, there would be nothing to be surrendered to the State. The foreign corporation could not return a license which it did not have, and could only voluntarily surrender a license when such revocation had been vacated or the license reinstated by compliance with the provisions of Section 5511 of the General Code, *supra*.

I am therefore of the opinion that a foreign corporation, whose license to do business within this state has been cancelled by virtue of the provisions of Section 5509 of the General Code is required to comply with the provisions of Section 5511 of the General Code and become again qualified to do business in this state before it can file the certificate of voluntary surrender of license by virtue of the provisions of Section 8625-20 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.