

timated expenditure for such building and equipment, in an amount in excess of that sanctioned by the voters, except perhaps in cases when such excess may be met by surplus available funds on hand.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

765.

CERTIFICATE OF CORPORATE COMPLIANCE—APPLICATION FOR SUCH MADE PRIOR TO NEW SECURITIES ACT—PROCEEDING PENDING—ISSUANCE FEE UNDER OLD LAW CHARGEABLE.

*SYLLABUS:*

*When an application has been filed for a Certificate of Corporate Compliance in accordance with the provisions of Section 6373-14, General Code, prior to July 21, 1929, such application constitutes a pending proceeding within the meaning of Section 26, General Code, and the fee to be paid by such applicant for such certificate issued subsequent to July 21, 1929, the effective date of Amended Senate Bill No. 12, should be ten dollars, as provided in Section 6373-16, General Code, as in force and effect prior to July 21, 1929.*

COLUMBUS, OHIO, August 19, 1929.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

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

“Your opinion is respectfully requested on the following matter:

A corporation files all of the necessary papers for certification of its stock under Section 6373-14, prior to July 21, 1929.

The examination referred to in Section 6373-16 is not completed until after July 21, 1929, and the issuance fee of \$10.00 cannot be paid until a date subsequent to July 21, 1929.

The new Securities Act became effective July 21, 1929.

The question on which I desire your opinion is: When Certificate of Corporate Compliance is issued to such corporation subsequent to July 21, 1929, shall the issuance fee be charged under the old law (Section 6373-16) or under the new law?”

Section 26, General Code, provides as follows:

“Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

If the provisions of this section are applicable to the question submitted, there

is no doubt but that the issuance fee to be charged, as set forth in your letter, should be in accordance with the provisions of the Securities Law prior to amendment by the 88th General Assembly.

It is first pertinent to note that the application for a Certificate of Corporate Compliance, filed prior to July 21, 1929, the effective date of Amended Senate Bill No. 12, was on that date pending within the meaning of Section 26, General Code.

The next matter for consideration is the question of whether or not this pending application is a proceeding within the meaning of the term as used in Section 26, supra. In the case of *Union County vs. Greene*, 40 O. S., 318, the Supreme Court held that the word "proceeding" as used in Section 26 related to judicial matters. Since then, however, a more liberal construction has been placed upon this word as used therein. The courts have gone so far as to hold that the plans of a building commission for the construction of a court house constitute a proceeding within the meaning of this section. *State, ex rel. vs. Cass*, 13 O. C. C. (N. S.) 449. Affirmed without report in *State, ex rel. vs. Building Commission*, 84 O. S. 443. This section of the General Code has been construed repeatedly by this office as being applicable to proceedings in connection with road improvements when petitions for such improvements have been filed prior to the effective date of amendatory legislation affecting such matters. The applicability of this section as bearing upon pending matters before an arm of the State government has also been considered by this office. See Opinions of the Attorney General, 1916, Vol. I, p. 491. This opinion held that the filing of a complaint with the District Board of Complaints and the appeal from the decision of such board to the Tax Commission constitutes a "proceeding" within the meaning of Section 26, General Code.

In view of the foregoing, having in mind the liberal construction that has been placed upon the term "proceeding" as used in Section 26, I have no difficulty in concluding that the application for a Certificate of Corporate Compliance filed in accordance with the provisions of Section 6373-14, General Code, as in force and effect prior to amendment by the 88th General Assembly, is a proceeding within the meaning of Section 26, supra.

Coming now to a consideration of whether or not Amended Senate Bill No. 12 contains any expression or provision indicative of a legislative intent that the act should apply to pending proceedings, it must be noted that the only reference to Sections 6373-1 to 6373-24, inclusive, as in force and effect prior to July 21, 1929, is contained in Section 48 of the act, which merely provides that these sections are repealed.

In view of the foregoing and specifically answering your question, I am of the opinion that when an application has been filed for a Certificate of Corporate Compliance in accordance with the provisions of Section 6373-14, General Code, prior to July 21, 1929, such application constitutes a pending proceeding within the meaning of Section 26, General Code, and the fee to be paid by such applicant for such certificate issued subsequent to July 21, 1929, the effective date of Amended Senate Bill No. 12, should be ten dollars, as provided in Section 6373-16, General Code, as in force and effect prior to July 21, 1929.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*