

1248.

OHIO CORPORATION—SHARES AND STOCK EXEMPT FROM TAXATION UNDER SECTION 192, GENERAL CODE.

SYLLABUS:

A company formed by the consolidation of an Ohio corporation with a company of another state is an Ohio corporation within the meaning of Section 192, General Code, and the shares of stock of such company are exempt from taxation in this state under such section, which provides that no person shall be required to list for taxation a share of the capital stock of an Ohio corporation. Opinion of this department reported in Opinions, Attorney General, 1917, p. 542, approved and followed.

COLUMBUS, OHIO, November 9, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads:

“The Commission has directed me to submit to you for your consideration and opinion the question of the liability to general property tax of stock in a consolidated corporation when owned by a resident of this state, Ohio being one of the states represented in the consolidation.”

You also enclose supplementary letter which reads:

“To assist you in the consideration of the question covered by the accompanying letter, may I call your attention to two former opinions on this same subject which do not seem to be in accord. The references are as follows:

1917 Opinions, volume one, page 542.

1919 Opinions, volume one, page 165.

On October 17, 1923, the then commission asked your predecessor for his views. He rendered no formal *opinion* but under date of November 13, 1923, wrote us indicating his preference for the opinion rendered by Mr. McGhee in 1917. This letter, however, is not incorporated in the published opinions but has been adhered to by the commission. We find that it is not accepted in some of the more important counties and has been questioned by some of the legal departments of investment companies. In view of the conflict between the opinions of 1917 and 1919 and the fact that Mr. Crabbe's expression of views has not been carried into the published volume it seems best to the commission to endeavor to settle the doubt authoritatively by submitting it to you.”

The opinion to which you refer, reported in Opinions, Attorney General, 1917, page 542, was rendered to the Tax Commission in answer to an inquiry as to whether the stock of the Pittsburgh, Youngstown and Ashtabula Railroad Company in the possession of residents of Ohio was taxable in this state.

This company was chartered in Ohio on January 13, 1906, and in Pennsylvania on January 16, 1906, and the consolidation of the Pittsburgh, Youngstown and Ashtabula Railroad Company and the New Castle & Beaver Valley Railroad Company

became effective as of January 1, 1906. The property was originally leased to the Pennsylvania company from year to year at an annual rental equal to the net earnings of the road after deducting operating expenses and taxes. On May 15, 1910, the property was leased to the Pennsylvania company for 999 years from July 1, 1910.

The 1917 opinion held as follows:

"The shares of stock of a railroad company formed by consolidation of an Ohio corporation with a company of another state are not exempt from taxation in this state under the provisions of Section 5372, General Code, but the company so formed is an Ohio corporation within the meaning of Section 192, General Code, and the shares of stock of such railroad company are exempt from taxation in this state under said Section 192, General Code, which provides that no person shall be required to list for taxation a share of capital stock of an Ohio corporation."

The opinion rendered in 1919, Opinions, Attorney General for that year, page 165, was rendered in answer to the Tax Commission's inquiry as to what action should be taken respecting the case of *Hinkle, Executor, vs. Cooper*, then pending in the Common Pleas Court of Hamilton County, Ohio. This case involved the question as to the taxability of certain shares of the Covington and Cincinnati Bridge Company. My predecessor restated the Commission's question as follows:

"Are the shares of stock of a corporation which owes its existence to the concurrent special legislation of Ohio and another state taxable in Ohio?"

On March 9, 1849, the special legislation referred to in the above question was passed. After reciting the Kentucky statute in full, it is provided that:

"The Covington & Cincinnati Bridge Company, thereby created, shall be, and the same is hereby made, a body corporate and politic of this state, with the same franchises, rights and privileges, and subject to the same duties and liabilities as are specified in the above recited act, in manner and form as though the said act were fully and at large set forth, section for section, word for word, * * * "

The opinion then discussed the question as to whether or not the corporation in question was such as was contemplated in Section 192, General Code, which provided that "no person shall be required to list for taxation a share of the capital stock of an Ohio corporation." It was then stated that:

"If the company is an 'Ohio corporation' within the meaning of this statute, and the statute is valid, its stock is not taxable in this state, though its right to exist might be subject to direct attack.

* * * * *

I think it is not going too far to say that Section 192, G. C., is to be interpreted in connection with the law referred to, especially in view of the fact that the exemption of shares of stock in a foreign corporation under certain circumstances is conditioned by Section 192 upon payment of certain franchise taxes. This being the case, it would seem reasonable to hold that an 'Ohio corporation' within the meaning of Section 192 is one that is treated as such for the purpose of the franchise tax. In other words, the classification which Section 192 makes as between 'Ohio corporations' and 'foreign corpora-

tions' must be that classification which was in the minds of the members of the General Assembly which enacted Section 192, growing out of their consideration of the general subject of the taxation of corporations in connection with the franchise tax."

The question was answered in the opinion by the statement that:

"Corporations should be treated as 'Ohio corporations' for the purposes of Section 192, G. C., and their stock held exempt from taxation only if they are treated as 'domestic corporations' for all purposes under the franchise tax law."

The letter from my predecessor, to which you refer, dated November 13, 1923, was in answer to the Commission's inquiry as to whether the stock of the then newly consolidated The New York, Chicago & St. Louis Railroad Company held by residents of Ohio was subject to taxation in this state, or whether said corporation was to be considered a domestic corporation and its stock exempt from taxation. The Commission called attention to the 1917 and 1919 opinions mentioned in your recent letter, and suggested that the Commission was in doubt as to which of these opinions applied to the case submitted. In reply it was stated:

"Upon an examination of this question and these two opinions, it is believed that the former opinion, namely, the one rendered in 1917 is applicable to and considers and determines the same points involved in your present inquiry."

The Commission was therefore referred to the 1917 opinion for the answer to the inquiry submitted.

It will be noted that each opinion (1917 and 1919) was based upon a concrete case—a specific statement of facts. The former opinion dealt with the stock of a Railroad Company formed by the consolidation of an Ohio Company and a Pennsylvania Company on January 1, 1906. It was held that the company so formed was an Ohio corporation within the meaning of Section 192, General Code, and that the shares of stock of such railroad company were exempt from taxation in Ohio. The 1919 opinion dealt with the question:

"Are the shares of stock of a corporation which owes its existence to the concurrent special legislation of Ohio and another state taxable in Ohio?"

The specific facts being that the said The Covington and Cincinnati Bridge Company, a Kentucky corporation was, previous to the adoption of the Ohio Constitution, 1851, by a special act of the legislature made,

"A body corporate and politic of this state with the same franchises, rights and privileges, and subject to the same duties and liabilities as are specified in the above recited act, in manner and form as though the said act were fully and at large set forth, section for section, word for word. * * * "

The question there under consideration was as to whether it was such a corporation as was contemplated in Section 192, General Code, which provided that:

"No person shall be required to list for taxation a share of the capital stock of an Ohio corporation."

After stating that the Supreme Court of this state seems to have intimated that the corporation was, for the purpose of taxation, to be treated as an Ohio company, the following quotation was made from an opinion of Welch, J. in *Bridge Company vs. Mayer*, 31 O. S. 317, 325 :

"We are satisfied * * * that this corporation, having been chartered and organized under the laws of both states, might lawfully hold its meetings and transact its corporate business in either state; and that, therefore, the stock in question was issued under authority of Ohio law. * * * The truth is, that this is a single corporation, clothed with the powers of two corporations. It acts under two charters, *which in all respects are identical*, except as to the source from which they emanate. What is authorized by one of these charters is authorized by both. What may lawfully be done under one may lawfully be done under both. * * * "

The same proposition is carried into the syllabus of the case.

In the 1919 opinion it was said as follows :

"In view of these authorities it is very clear that, for all ordinary purposes, at least, the Covington and Cincinnati Bridge Company, is an 'Ohio corporation'. The exact question, however, is as to whether it is such a corporation within the meaning of Section 192, G. C. * * * This statute was passed as an amendment to 148c R. S. in 1902 (95 Ohio Laws 539) ; it became a part of the law of this state at the time of the imposition of what is familiarly known as the 'Willis Tax' on the franchise of being a corporation (95 Ohio Laws 124; see present Section 5495 et seq. G. C.). I think it is not going too far to say that Section 192, G. C., is to be interpreted in connection with the law referred to, especially in view of the fact that the exemption of shares of stock in a foreign corporation under certain circumstances is conditioned by Section 192 upon payment of certain franchise taxes. This being the case, it would seem reasonable to hold that an 'Ohio corporation' within the meaning of Section 192 is one that is treated as such for the purpose of the franchise tax. In other words, the classification which Section 192 makes as between 'Ohio corporation' and 'foreign corporation' must be that classification which was in the mind of the members of the General Assembly which enacted Section 192, growing out of their consideration of the general subject of the taxation of corporations in connection with the franchise tax."

From what has been said it seems evident that there is no real conflict between the 1917 and 1919 opinions of this department. The first of said opinions holds that the company formed by consolidation of an Ohio corporation with a company of another state is an Ohio corporation within the meaning of Section 192, General Code, and that the shares of stock of such company are exempt from taxation in this state under said section; while the second opinion holds that the shares of stock of a corporation which owes its existence to the concurrent special legislation of Ohio and another state should be held exempt from taxation only if said corporation is treated as a domestic corporation for all purposes under the franchise tax laws. Some doubt is expressed in the 1919 opinion as to the exact answer and the opinion concludes with the statement that the question growing out of the then pending case should be settled by the courts.

In the case referred to in the Commissioner's inquiry of 1919, viz., *Hinkle, executor, vs. Cooper*, in the Common Pleas Court of Hamilton County, Ohio, that court held

that the stock of said Bridge Company was not taxable and no further action was taken in said case.

Section 2 of Article XII of the Constitution provides:

“Corporations may be formed under general laws; but all such laws may from time to time be altered or repealed.”

A railroad corporation may be created by filing articles of incorporation and organization under the general corporation statutes of this state, and if the corporation has been so created and has thereafter by purchase or merger acquired the properties of another corporation located in a state outside of Ohio, I do not understand that the first corporation would for that reason be considered any the less an Ohio corporation within the meaning of Section 192 of the General Code, or otherwise. Nor do I understand that a railroad company formed by consolidation of two or more existing railroad companies incorporated under the laws of this state would be considered any the less an Ohio corporation than if it had filed articles of incorporation and had organized pursuant to the general incorporation statutes.

Your question is general and as the opinion of 1917, to which you refer, thoroughly discusses and considers the various cases applicable and answers your question, I deem it unnecessary to discuss the cases and principles therein enumerated.

I agree with the reasoning and conclusions of the opinion reported in Opinions, Attorney General, 1917, page 542, and it is my opinion that a company formed by the consolidation of an Ohio corporation with a company of another state is an Ohio corporation within the meaning of Section 192, General Code, and that the shares of stock of such company are exempt from taxation in this state under such section, which provides that no person shall be required to list for taxation a share of the capital stock of an Ohio corporation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1249.

APPROVAL, BONDS OF CENTER TOWNSHIP RURAL SCHOOL DISTRICT, MERCER COUNTY—\$83,500.00.

COLUMBUS, OHIO, November 9, 1927.

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

1250.

APPROVAL, BONDS OF THE VILLAGE OF WEST UNION, ADAMS COUNTY—\$2,700.00.

COLUMBUS, OHIO, November 9, 1927.

Industrial Commission of Ohio, Columbus, Ohio.