

Since the interest referred to in Section 3817 of the General Code is not chargeable until the assessment is due and unpaid, it necessarily follows that one-half of any annual installment is chargeable with interest after the 20th day of December, unless the time of payment of taxes has been extended beyond that date in accordance with law. If such extension is granted, the interest should commence from the date to which such extension is made. The remaining half of the installment of the assessment is not due and payable until the 20th day of June, or such date to which the time of payment of taxes has been lawfully extended.

I direct your attention further to the fact that the language of Section 3892 now is specific as to the imposition of a penalty of the same character as that for delinquent taxes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

991.

CORPORATION—WHEN CORPORATION MAY PROPERLY CLAIM EXEMPTION OF A PORTION OF ITS STOCK UNDER SECTIONS 6373-2 (f) AND 6373-14, GENERAL CODE.

SYLLABUS:

A corporation organized under the laws of this state, may properly claim exemption of a portion of its stock under Section 6373-2 (f) and Section 6373-14 of the General Code, where the disposal of the portion then proposed to be disposed of in good faith and not for the purpose of avoiding the provisions of the securities act, is made for the sole account of the issuer, without any commission, and at a total expense of not more than two per cent of the proceeds realized therefrom, plus five hundred dollars, and where no part of the stock to be presently disposed of is issued, directly or indirectly, in payment of patents, services, good will or for property not located in this state. Under such circumstances, the facts surrounding any prior issue of the same class of stock or other securities by such corporation are immaterial.

COLUMBUS, OHIO, September 12, 1927.

HON. NORMAN E. BECK, *Chief Division of Securities, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent letter as follows:

“A corporation was organized under the laws of the State of Ohio with an authorized capitalization of 100 shares of common stock, par value \$100.00 per share. 500 shares of its authorized capital stock were qualified, under Section 6373-14, General Code of Ohio, same being disposed of through a licensed dealer at a commission of 10%. The securities so qualified are now outstanding. This company now proposes to qualify the balance of its authorized 500 shares of common stock by exemption under Section 6373-2 (f). Section 6373-2 (f) reads as follows:

“The issuer, organized under the laws of this state, where the disposal, in good faith and not for the purpose of avoiding the provisions of this act, is made for the sole account of the issuer, without any commission and at a total expense of not more than two percentum of the proceeds realized there-

from plus five hundred dollars and where no part of the issue to be disposed of is issued, directly or indirectly, in payment for patents, services, good will, or for property not located in this state; provided that the president and secretary, or the incorporators if done before organization, of the issuer shall, prior to such disposal file with the "commissioner" a written statement setting forth the existence of all such facts and that such issuer is formed for the purpose of doing business within this state.'

There is a diversity of opinion as to the meaning of 'where no part of the issue to be disposed of,' etc. Kindly advise whether, in your opinion, this phrase, no part of the issue to be disposed of, refers to the issue to be presently disposed of, or whether it refers to the entire authorized capital of the particular issue referred to. May this corporation qualify the unissued 500 shares of its common stock under Section 6373-2 (f)?"

Sub-paragraph (f) of Section 6373-2, which you quote, constitutes one of the exceptions to the otherwise comprehensive definition of the term "dealer." That definition is as follows:

"The term 'dealer,' as used in this act, shall be deemed to include any person or company, except national banks, disposing, or offering to dispose, of any such security, through agents or otherwise, and any company engaged in the marketing or flotation of its own securities either directly or through agents or underwriters or any stock promotion scheme whatsoever, except:
* * * "

Attention should also be directed to the fact that in Section 6373-14, General Code, which section provides for the certification of security issues, it is provided that the section shall not apply "in the case of an issuer excepted under paragraph (f) of Section 6373-2, General Code." If, therefore, the facts warrant, the issuer is not a dealer within the terms of the act nor are the securities such as require certification.

Your inquiry is whether or not the word "issue," as used in sub-paragraph (f) includes all of a particular class of stock or just that portion which, at the moment, is sought to be disposed of to the public.

I find that a very similar question has heretofore received consideration from this office. In Annual Report of the Attorney General for 1913, at page 827, is found an opinion in response to the following question:

"Do the words 'the issue,' used in the line six of subdivision 'f' of Section 2 of the act entitled 'An Act to regulate the sale of bonds, stocks and securities and of real estate not located in Ohio, and to prevent fraud in such sales,' passed April 28, 1913, refer to the particular issue of bonds, stocks or securities, of which the 'securities' under consideration are a part, or do said words 'the issue' refer to the entire bond, stock or security, as the case may be, issued by the corporation applying?"

At page 829 the following is used:

"It is manifest that if the words 'the issue,' as used in this paragraph, are to be construed as including more than the particular issue a company may desire to dispose of, and to include the entire bond, stock or other security, issue or issues of such company, such construction might impose a disability on the company arising out of transactions which took place before the enactment of the act under consideration; which construction is contrary to

the plain intent that provisions of this paragraph are to be prospective in their effect only.

Again, a sale or other disposition of its stock or other 'securities' without license under the provisions of this paragraph, is one of several exceptions to sales of 'securities' which otherwise, under the provisions of the act, must be made by a licensed 'dealer.' By Section 9 of the act it is provided that before a licensee (licensed 'dealer') shall dispose or offer to dispose of securities within this state, he shall file with the 'commissioner' certain information including the following: 'A pertinent description of such securities, and the purpose of said issue.' It is evident that the word 'issue,' as used in this connection, is, by legislative intent, in the singular, and referable only to the particular issue that the licensee may then desire to dispose of. The meaning of the word 'issue' being clear in this connection it is to be presumed that the legislature used the word with the same meaning in the paragraph out of which the question made by you arises.

'Where the same word or phrase is used more than once in the same act in relation to the same subject matter, and looking to the same general purpose, if in one connection its meaning is clear and in another it is otherwise doubtful or obscure, it is in the latter case to receive the same construction as in the former, unless there is something in the connection in which it is employed, plainly calling for a different construction.'

Thodes vs. Weldy, 46 O. S., 234.

For the reasons above stated and on a consideration of the whole of the act in question, I am of the opinion that the words 'the issue,' as used in paragraph (f) of Section 2, refer to the particular issue which a company may desire to dispose of under favor of this paragraph, and not 'to the entire bond, stock or security, as the case may be, issued by the corporation applying'."

While, perhaps, under the question there discussed the conclusion of the then attorney general should be limited to a holding that the word "issue" meant only the particular issue under consideration and not other classes of stock and bond issues, much of the language which I have quoted is pertinent to the present discussion.

It is my understanding that the securities division in the certification of stock has heretofore interpreted the act as authorizing them to pass upon and authorize the disposal of only a part of a particular issue of stock. That is to say, though the corporate authority may in a particular instance extend to the issuance of ten thousand shares of no par stock for example, the corporation may not deem it advisable to dispose of the entire issue at once and, indeed, although the corporation may seek such authority, I believe that you have held it within your authority to certify only a portion thereof for disposition. I have no hesitancy in saying that this interpretation of your authority is correct. What the state is particularly interested in is the offering of securities to the public, and it is immaterial from the standpoint of the Blue Sky Law what the authorized capital stock of a corporation may be. It is only when stock is actually being offered to the public that the restrictive provisions of the securities act become applicable.

Apparently this interpretation of the act was applied in the instance you cite. The corporation, although authorized to issue one thousand shares of common stock, was only granted authority by your department under Section 6373-14 of the General Code to issue five hundred of those shares. These shares were disposed of through a licensed dealer at a commission of ten per cent. The company now proposes to dispose of the remainder of its authorized capital stock and, as I understand it, it is claiming the benefit of the exemption of sub-paragraph (f) so that I assume the disposition is to be made by the corporation itself without any commission and at a total expense of

not more than two per cent of the proceeds realized therefrom plus five hundred dollars and no part of the issue to be disposed of is issued directly or indirectly in payment of patents, service, good will or for property not located in this state. The language I have just used is taken directly from the statute and the answer to your question, of course, hinges upon whether the phrase "no part of the issue to be disposed of" has reference to all the authorized stock of the particular class or only to that part which is to be presently sold. It should also be noted that this language just quoted is contained in the second clause of the exception. The first clause uses language which in my opinion is very helpful in the interpretation of the meaning of the legislature. The word "disposal" can certainly have reference only to the portion of the issue for which authority is sought and it cannot comprehend that portion which has been heretofore issued and sold. It is true that these two clauses are in the conjunctive and that the circumstances enumerated therein must all be present before exemption is warranted, but I feel that the language of the two clauses, when they are construed together, while far from clear, apparently authorizes the exemption when the circumstances set forth are applicable to the portion of the issue for the disposition of which your authority is sought. As was stated in the prior opinion of this department from which I have quoted, any other interpretation would give retrospective effect to these provisions and, as my predecessor has said, the plain intent is that the provisions of this paragraph are to be prospective in their effect only. For example, if the five hundred shares of capital stock in this case had been disposed of prior to the enactment of the Blue Sky Law, the exemption of the additional shares would become dependent upon circumstances surrounding the original issue. Such an interpretation would, I believe, be unwarranted.

I am not unmindful of the language used in the opinion of this department reported in Opinions of the Attorney General for 1915, at page 256. In the case there under consideration the company was proposing to dispose of \$25,000 of common capital stock. \$16,500 of this stock was to be issued direct without commission or expense and the remainder thereof was to be exchanged for certain rights and leases located in the state of Georgia. It was there held that if any portion of the capital stock was issued directly or indirectly for property not located within this state, the exemption of sub-paragraph (f) of Section 6373-2 was not available. It is to be observed, however, that the facts obviously justified this conclusion because all of this stock was to be issued at the same time. Had the \$8500 worth of stock been first issued and duly certificated and subsequently application made for exemption of the \$16,500 worth of stock, I am of the opinion that such exemption would have been justified.

If a broad interpretation were placed upon the language of this section and it were necessary that the circumstances set forth therein be applicable to all issues of stock, it is obvious that there would be very few instances in which an old corporation could claim exemption. Such a conclusion is negated by the opinion of the Attorney General from which I have first quoted. Likewise, if the language be construed to apply to all of a particular issue but not to all issues, the result would be that, where a portion of the issue had been theretofore disposed of in a manner which would not admit of its exemption under sub-paragraph (f) of Section 6373-2 of the Code, the remainder could not be exempted but a new issue of a different class of stock could be exempted. I also feel that this conclusion is scarcely justifiable.

In my opinion, therefore, a corporation organized under the laws of this state, may properly claim exemption of a portion of its stock under Section 6373-2 (f) and Section 6373-14 of the General Code, where the disposal of the portion then proposed to be disposed of, in good faith, and not for the purpose of avoiding the provisions of the securities act, is made for the sole account of the issuer, without any commission, and at a total expense of not more than two per cent of the proceeds

realized therefrom, plus \$500.00, and where no part of the stock to be presently disposed of is issued, directly or indirectly, in payment of patents, services, good will or for property not located in this state. Under such circumstances, the facts surrounding any prior issue of the same class of stock or other securities by such corporation are immaterial.

In so holding, I am not unmindful of the fact that the result of this conclusion may in certain instances be unfortunate. Whatever the financial circumstances of a corporation may be or however ill advised its purposes, it may claim exemption under this paragraph provided the disposition of the stock proposed to be sold is within the language of the paragraph. This is especially true in the initial steps of an enterprise. In such a case, where no stock whatever is outstanding, it is quite apparent that the exemption would be available and you would have no supervisory authority whatsoever, irrespective of the character of the enterprise. The legislature has seen fit to make the exemption based upon the receipt by the corporation of the proceeds of the securities issued, less the stipulated amount for expenses, and subject to the exception that the securities shall not be issued nor the proceeds applied in payment for patents, services, good will or property not located in this state. So long as the corporation obtains the proceeds and does not dispose of them in the manner just indicated, it is immaterial how ill advised or mad the venture may be—the claim for exemption may still be properly made.

The legislature has seen fit to make the exception under discussion. As I have pointed out, this exception may permit of the flotation of securities of questionable value in certain instances. At the same time it must be borne in mind that legitimate business should not be unnecessarily restricted. If any remedy be needed, resort should be had to the legislature.

Respectfully,
EDWARD C. TURNER,
Attorney General.

992.

APPROVAL, BONDS OF DEER PARK VILLAGE SCHOOL DISTRICT, HAMILTON COUNTY, OHIO—\$65,000.00.

COLUMBUS, OHIO, September 13, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

993.

APPROVAL, BONDS OF THE VILLAGE OF INDEPENDANCE, CUYA-HOGA COUNTY, OHIO—\$56,100.00.

COLUMBUS, OHIO, September 13, 1927.

Industrial Commission of Ohio, Columbus, Ohio.