

4555.

APPROVAL, BONDS OF BURBANK VILLAGE SCHOOL DISTRICT,  
WAYNE COUNTY, OHIO—\$1,200.00.

COLUMBUS, OHIO, August 8, 1932.

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

4556.

CORPORATION—ORGANIZED UNDER LAWS OF FOREIGN STATE AS  
“CORPORATION FOR PROFIT”—MAY NOT QUALIFY IN OHIO AS  
“CORPORATION NOT FOR PROFIT.”

*SYLLABUS:*

*A corporation organized under the laws of a foreign state for profit may not qualify to do business in Ohio under the Foreign Corporation Act of Ohio, as a corporation not for profit, even though by virtue of an agreement between its stockholders it is operated as a corporation not for profit.*

COLUMBUS, OHIO, August 9, 1932.

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

DEAR SIR:—I am in receipt of your request for opinion as to whether a corporation organized for profit under the laws of the State of Illinois which by virtue of an agreement between its stockholders pays whatever profits, if any, earned by such corporation to a voluntary unincorporated association of life insurance companies which operates not for profit may obtain a license to do business in Ohio under the Ohio foreign corporation act as a corporation not for profit.

You enclose with your request a copy of the articles of incorporation of such corporation together with photostatic copies of the amendments thereto, together with correspondence addressed to you from such corporation. From these enclosures it is evident that the A.——— Service Bureau is organized under the Illinois Act entitled, “An Act in Relation to Corporations for Pecuniary Profit.” It is elemental that the nature of this corporation must be determined by the law of the state creating it, since a corporation is a legal entity and has no existence except by virtue of statute.

In 10 O. J., Section 847, page 1118, the author distinguishes between corporations not for profit and corporations for profit as follows:

“Corporations not for profit may, in general, be said to embrace all the different classes of corporations organized for purposes other than for pecuniary profit to the members—the membership corporation. Associations not for profit may be religious, fraternal, charitable, or benevolent associations. Corporations for profit, within the meaning of the statute, are those which are formed for the prosecution of business enterprises with a view to realizing gains to be distributed as dividends among the shareholders in proportion to their contributions to the capital stock.”

Corporations for profit are defined by the court in the case of *Snyder vs. Chamber of Commerce*, 53 O. S., 1, 11, as follows:

“Corporations for profit within the meaning of the statute are those which are formed for the prosecution of business enterprises with a view to realizing gains to be distributed as dividends among the shareholders in proportion to their contributions to the capital stock.”

The charter of the A.———Service Bureau, Inc., sets forth that it is a corporation organized for profit and has shares of stock and in such charter and the statute under which it is incorporated no limitations have been placed upon the right of such corporation or upon the rights of the stockholders to distribute the profits by way of dividends.

The correspondence enclosed discloses that the actual capital of the A.———Service Bureau, Inc., was contributed by the unincorporated association which operates a corporation not for profit, that the shares of stock in this corporation are held in the name of the members of the executive committee of such voluntary association, that each of such nominal stockholders has executed a declaration of trust which reads in part, as follows:

“Said shares of stock shall be held by said Trustees and their successors, in trust, for the benefit of the organization known as the———Life Convention, and any and all net profits of the said———Service Bureau, after setting aside such sums as the Executive Committee of the———Life Convention shall agree to for development, shall be annually donated to the said———Life Convention to be used by said———Life Convention in the furtherance of its general objects and plans; it being one of the purposes of the said trusteeship that no stockholder of the ——Service Bureau, or his legal representatives or assigns, shall ever reap any financial profit from the operation of the said———Service Bureau.”

It is thus apparent that while the nominal stockholders of this corporation are individuals the beneficial interest is owned by the voluntary association.

It is therefore evident that the corporation in question is not a “foreign corporation organized not for profit” within the meaning of that language as contained in Section 8625-27, General Code. Such section, in so far as material, reads as follows:

“From and after sixty days after this act goes into effect, no foreign corporation organized not for profit shall exercise in the course of repeated and successive transactions its corporate privileges in this state until it shall have first procured from the secretary of state a certificate authorizing it so to do.”

Specifically answering your inquiry I am of the opinion that the corporation organized under the laws of a foreign state for profit may not qualify to do business in Ohio under the Foreign Corporation Act of Ohio as a corporation not for profit even though by virtue of an agreement between its stockholders it is operated as a corporation not for profit.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*