2. Obligations of the Bureau of Lakes and Parks of the Division of Conservation which were duly contracted during the life of such House Bill 531 are payable from the uses and purposes fund of such division after the effective date of the repeal of the appropriations contained in such House Bill 531; but the mere existence of encumbrances of moneys in the uses and purposes fund for the Bureau of Lakes and Parks does not authorize expenditures pursuant to such encumbrances after the effective date of the repeal of such House Bill 531 unless obilgations were duly contracted prior thereto.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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5652.

FOREIGN CORPORATION—OFFICE IN OHIO WHERE RENTALS FROM LEASES RECEIVED—FRANCHISE REPORT NEED NOT INCLUDE SUCH.

*SYLLABUS:*

*A foreign corporation maintains a business office in Ohio, where its books of account and corporation records are kept and where occasional meetings of stockholders and directors are held and at which office the company receives rentals derived from the leasing of tank car equipment pursuant to written leases, all of which are executed and delivered outside of the state of Ohio; HELD:*

*For the purpose of the report required under section 8625-7, General Code, no part of the above business is business done in Ohio of said corporation.*

COLUMBUS, OHIO, May 29, 1936.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication which reads as follows:

> "Your opinion is respectfully requested with respect to the measure of Ohio business for the purpose of a report required under G. C. 8625-7 under the following statement of facts:
>
> 'The Canton Tank Car Company is a Delaware corporation, with its principal office in the State of Delaware. It formerly maintained a business office in Chicago, but such office has since

been removed to Cleveland. The Canton Tank Car Company is licensed under the Ohio Foreign Corporation Act, and the question involved is the measure of Ohio business of the company for the purposes of the report required to be made pursuant to General Code Section 8625-7. The company owns tank car equipment which it leases to various corporations foreign to Ohio, and these corporations use such equipment in the transportation of their products throughout the greater portion of the United States.

At its Cleveland Office the company maintains its books of account, keeps its corporate record and seal and holds occasional meetings of shareholders and directors. At this office the company receives the rentals derived from leases of tank car equipment, all of which leases were executed and delivered outside of Ohio. The business of transportation in such tank cars by such lessees is, with respect to the State of Ohio, either interstate commerce or commerce wholly without the State of Ohio.' "

An examination of the decisions, of the various states, as to what constitutes "doing business" within the state, discloses considerable conflict. A number of the inconsistencies can be removed, however, by considering the facts under which the decisions arose. In the present instance, we are concerned merely with what constitutes "doing business" for the purpose of qualification.

The question of what constitutes "doing business" in the state is not a question of law, but instead a question of fact. Each case must therefore be made to rest upon its own facts and the particular finding of fact made in each case must be held to govern. Short Film Syndicate, Inc., vs. Standard Film Co., 39 O. App. 79.

The general rule with reference to "doing business" is stated in Corpus Juris, Volume 14a, at page 1270, as follows:

"The general rule is that when a foreign corporation transacts some substantial part of its ordinary business in a state, it is doing, transacting, carrying on, or engaging in business therein * * *."

In the matter before us, the corporation in question maintains an office in this state, and the only act performed by it in this state consists of the collection of rentals due it from the leasing of equipment owned by it.

It is generally held that the mere maintaining of an office in the state by a foreign corporation does not alone constitute "doing business."

Advance Lumber Co. v. Moore, 126 Tenn. 313; Hovey vs. DeLong Hook and Eye Co., 211 N. Y. 420; Higgin Manufacturing Co. vs. Foreman Brothers Banking Co., 222 Ill. App. 29.

While there are decisions which hold that a foreign corporation which maintains in a state an office where meetings of stockholders and directors are held and the corporate books and records are kept, is "doing business" in such state, yet it will be observed that it is particularly for purposes of taxation that the maintenance of an office for the above purposes has been held to constitute "doing business." Generally, the decisions hold that the doing of such acts does not constitute "doing business" for the purpose of qualification. In the case of Bradbury vs. Waukegan, etc. Mining Smelting Co., 113 Ill. App. 600, it was held that:

> "Maintenance of an office in the state for the use of the corporation's secretary where stock certificates were issued, books kept, and directors' meetings held, was not 'doing business.'"

Likewise, in the case of People vs. Mascot Cooper Co., 211 Ill. App., 151, it was held that a foreign mining company owning mines outside the state and having an office in the state for convenience in conducting its internal affairs is not "doing business."

In the case of Stephenson vs. Dodson, 15 Pa. Dist., 771, is was stated:

> "Maintenance in the state of an office for holding directors' meetings and the issuance of a bond and mortgage of real property is not "doing business'".

See also Meier vs. Crossley, 305 Mo. 206; Lindsay vs. Pittsburgh Tin Plate and S. Co., 29 Pa. District, 569.

In regard thereto, it is likewise stated in Corpus Juris, Volume 14a, page 1279:

> "Furthermore, the statutes under consideration have been held not to be applicable to the transaction in a state by a foreign corporation of acts exclusively concerned with the management of its internal affairs. Thus it has been held that a foreign corporation is not doing, transacting, carrying on, or engaging in business in a state, within the meaning of the statute under consideration by holding corporate meetings therein; by issuing stock certificates; by the authorization of an issue of bonds; or by making calls on its stock."

I come now to the question of whether or not the receipt of rentals in the state of Ohio derived from the leasing of the equipment owned by the corporation constitutes "doing business" in Ohio. On this point, it is stated in Corpus Juris, Volume 14a, page 1278, that:

> "The collection in a state by a foreign corporation of debts due it for goods sold or otherwise contracted does not constitute doing, transacting, carrying on, or engaging in business within the meaning of the statutes under consideration; nor does the acceptance in a state of evidences of such debts, or the taking of security therefor come within the meaning of such statutes. The same is true of the action of a corporation in a state in adjusting or compromising such debts."

See also Bruner vs. Kans. Moline Plow Co., 168 Fed. 218; Wagner vs. Meakin, 92 Fed. 76; Meddis vs. Kenny, 176 Mo. 200; Charter Oak Life Insurance Co. vs. Sawyer, 44 Wis. 387.

From the above, it would therefore appear that the collection of rentals in Ohio of the corporation in question would in itself not constitute "doing business" in Ohio. It remains then to determine whether or not the execution and delivery of leases outside of the state of Ohio would be "doing business" in Ohio.

In the case of Sloss-Sheffield Steel & Iron Co. vs. Tacony Iron Co., 183 Fed. 645, it was stated:

> "A foreign corporation is not doing, transacting, carrying on or engaging in business in a state, by making outside of the state, sales or contracts for the sale of goods, where the goods are delivered or are to be delivered at a point outside of the state."

In regard thereto, it is likewise stated in Corpus Juris, Volume 14a, page 1281, that:

> "A foreign corporation is not doing, transacting, carrying on, or engaging in business in a state, within the meaning of the statutes under consideration, by entering into contracts with residents thereof, where such contracts are made and are to be performed elsewhere. This rule is not altered by the fact that such contracts relate to property situated within the domestic state. A fortiori, where such contracts do not relate to property situated within the state and are made with non-residents thereof."

In the instant case, the ordinary business of the corporation in question consists of the leasing of tank cars. By the application of the general rule, that a foreign corporation is "doing business" in a state by transacting therein some substantial part of its ordinary business, it would appear that in order to hold that the corporation in question is "doing business" in Ohio, it must be engaged in the leasing of some part of its car equipment in Ohio. Having concluded that the acts performed by the corporation in Ohio, each standing alone, would not constitute "doing business" in this state, the question which now presents itself is whether or not these acts are a part and so closely related to the ordinary business of the corporation, that the doing thereof in this state would amount to the conduct of some part of the corporation's ordinary business in Ohio.

As stated, the ordinary business of the corporation is the leasing of car equipment. The leases are all executed and delivered outside of the state of Ohio. While of course it might be said that the maintaining of an office and the collection of rentals are essential to the business of the corporation, yet these acts are involved and are an essential part of transactions which in all cases occur outside of the state of Ohio, and the actual doing of said acts in Ohio is merely incidental to the ordinary business conducted by the corporation outside of the state.

The general rule with reference to incidental transactions is stated in Corpus Juris, Volume 14a, page 1276, as follows:

> "The courts are in agreement that the transaction in a state by a foreign corporation of acts of business, whether commercial or otherwise, which are merely incidental to the business in which such corporation is ordinarily engaged, does not constitute the doing or carrying on of business within the meaning of statutes imposing conditions, restrictions, regulations, etc., on the right of foreign corporations to do business."

The above text is supported by the following cases:

Craig v. Leschen, etc., Rope Co., 38 Colo. 115;
Finch v. Zenith Furnace Co., 245 Ill. 586;
John Spry Lumber Co. vs. Chappell, 184 Ill. 539;
Morse v. Holland Trust Co., 184 Ill. 255;
Wilson v. Ohio Farmers' Ins. Co., 164 Ind. 462;
Mason v. Edward Thompson Co., 94 Minn. 472;
Conn. River Mut. F. Ins. Co. v. Way, 62 N. H. 622;
Penn. Colleries Co. v. McKeever, 183 N. Y. 98;
Williams v. Golden, 247 Pa. 397;
Milan Milling, etc. Co. vs. Gorten, 93 Tenn. 590.

Therefore, in specific answer to your question, it is my opinion that no part of the business done by a foreign corporation which maintains a business office in Ohio where its books of account and corporation records are kept and where occasional meetings of stockholders and directors are held and at which office the company receives rentals derived from the leasing of tank car equipment pursuant to written leases, all of which are executed and delivered outside of the state of Ohio, is business done in Ohio within the meaning of the term as used in section 8625-7, General Code.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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5653.

OLD AGE PENSIONER—DIVISION OF AID FOR AGED MUST PAY FUNERAL EXPENSES NOT TO EXCEED $100.00—ALSO COST OF GRAVE PAID BY DIVISION.

*SYLLABUS:*

*1. Under the provisions of Section 1359-10, General Code, as amended by House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, effective July 16, 1936, it is mandatory that the Division of Aid for the Aged make burial awards to defray the burial expenses of deceased old age pensioners. If the actual burial expenses are $100.00 or less it is mandatory that the Division of Aid for the Aged make payment of such amount to the proper person entitled thereto on the application, under oath, by such person, but in no case may the same award for burial expenses exceed $100.00.*

*2. Under the provisions of Section 1359-10, General Code, as amended by House Bill No. 605, enacted in the First Special Session of the 91st General Assembly, effective July 16, 1936, in addition to burial expenses, the Division of Aid for the Aged must pay a reasonable amount, which amount is within their sound discretion, for the grave and the opening and closing of the same, to the proper person entitled thereto.*

COLUMBUS, OHIO, May 29, 1936.

HON. H. J. BERRODIN, *Chief, Division of Aid for the Aged; Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

"On April 2, 1936, the Legislature passed House Bill No. 605, amending certain sections of General Code 1359, governing