Section 644-5 of the General Code, as amended in 111 O. L., at page 185, specifically refers to Section 5438, supra, and provides that nothing in the act shall be construed as modifying or repealing section 5438 of the General Code. It therefore becomes necessary to consider and construe the sections referred to together.

It may be of interest to observe that the purpose clause of The Marsh & McLennan Company, an Ohio corporation, which apparently is still in full force and effect, shows the following recital:

> "To act as agents or brokers in the business of marine, fire, life, accident and fidelity insurance, subject to the provisions of the laws of Ohio relating thereto."

It will be observed that the words "agents or brokers" are used parenthetically in the above charter but it would not be permissible to extend the meaning to include *foreign brokers* under our insurance law, and especially so in view of the express provisions of Section 644-2, General Code, as amended.

The Johnson & Higgins Company, referred to in your letter, likewise an Ohio corporation, has the following purpose clause:

> "Said corporation is formed for the purpose of conducting a general insurance agency business and the business of average adjusting."

In conclusion, it is my opinion that these Ohio corporations, apparently being in good and regular standing, are entitled to all the rights, benefits and privileges of similar Ohio corporations organized for similar purposes, as in said charters stated, subject to the laws of Ohio relating thereto, and that when said Ohio companies, and others of a similar nature, have made their applications in due and regular form, supplying therewith the necessary information, they have made a prima facie case entitling them to a license, under our resident agent's license law only.

And it is further my opinion that such domestic corporation may not use its license so obtained for the purpose of conducting, directly or indirectly, a foreign brokerage insurance business under the provisions of Section 644-2, General Code, as amended in 111 O. L., 183.

Respectfully,
EDWARD C. TURNER,
Attorney General.

45.

FRANCHISE FEE—MINIMUM PRESCRIBED BY SECTION 5499 G. C.—ADJUSTMENT UNDER SECTION 5495 G. C. SUBJECT TO LIMITATION—SHALL NOT BE REDUCED BELOW FEE PROVIDED IN SECTION 5499 G. C.

SYLLABUS:

The minimum prescribed by Section 5499 of the General Code applies to every case in which a franchise fee is payable to the state for the current year and any adjustment of the franchise fee, as provided for in Section 5495 of the General Code,

is subject to the limitation that such adjustment shall not reduce the fee below the minimum provided in Section 5499.

COLUMBUS, OHIO, February 1, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR.—I acknowledge receipt of your recent communication, as follows:

> "We respectfully request your opinion on the following subject:
>
> Ohio Laws 111, House Bill, 338, Section 5495, was enacted to read as follows:
>
> ' * * * that if any such corporation shall be adjudicated a bankrupt or a receiver shall be appointed therefor or a general assignment shall be made thereby for the benefit of creditors, such corporation shall file the report herein provided but it shall not be charged with any fee as hereinafter specified except for the portion of the then current year and of subsequent years during which such corporation had the power to exercise its corporate franchise unimpaired by such proceedings or act.'
>
> Section 5499 states: ' * * * which fee shall not be less than fifteen dollars in any case and shall immediately certify same to the treasurer of state.'
>
> If a corporation which is charged the minimum fee of fifteen dollars has a receiver appointed during the year, have we the authority under Section 5495 to adjust the fee and charge only for the portion of the current year during which this corporation exercised its franchise, or does Section 5499 apply in this case so that we will certify the full fifteen dollars?"

As your letter suggests, there is an apparent inconsistency in the language of the sections to which you refer.

The portion of Section 5495 of the General Code, which you have not quoted, provides in substance that each corporation shall annually, during the month of April, file a report with the Tax Commission. Section 5498 provides for the determination of the fair value on an asset basis of each corporation by the Tax Commission on the first Monday in September and a certification thereof to the auditor of state on the first Monday in October.

Section 5499 provides that on or before October 15th, the auditor shall charge for collection from each such corporation a fee of one-twelfth of one per cent upon such amount so certified, which fee shall be not less than fifteen dollars in any case and shall immediately certify the same to the treasurer of state.

Sections 5495 and 5499, in their present form, appear in the same act in 111 O. L., and were re-enactments of former analogous sections. It cannot, therefore, be said that either antedates the other so that the later enactment prevails.

Construing the language of Section 5495, it was obviously the legislative intent to relieve a corporation, whose rights to exercise its franchise should be impaired by receivership or an assignment, from the payment of any fee during the actual continuation of the impairment. It follows logically that, for any portion of a year during which its corporate powers are fully exercised, a fee may be and is required from every corporation.

Coming to a consideration of Section 5499, I find the specific provision that the "fee shall not be less than fifteen dollars in any case." I have no difficulty in concluding that the minimum so prescribed is of general application and specifically covers the case of any corporation which exercises its franchise rights unimpaired during any portion of a calendar year.

Answering your question specifically, therefore, I am of the opinion that a cor-

poration, which has been charged with the minimum fee of fifteen dollars and thereafter, during the year for which said tax was paid, has been placed in the hands of a receiver, is not entitled to any adjustment of such fee.

Respectfully,
EDWARD C. TURNER,
Attorney General.

46.

JUDGMENT OF MUNICIPAL COURT FOR VIOLATION OF ORDINANCE—REVERSED IN COMMON PLEAS COURT—PLAINTIFF IN ERROR ENTITLED TO RECOVER ALL COSTS, INCLUDING COST OF COMPLETE CERTIFIED TRANSCRIPT OF RECORD.

SYLLABUS:

When a judgment of conviction for violation of a municipal ordinance by the municipal court of Dayton is reviewed on error proceedings in a court of common pleas and the judgment of the lower court is reversed and final judgment entered against the city and the plaintiff-in-error ordered to recover his costs, the plaintiff-in-error is entitled to recover all court costs incurred to secure such reversal and therefore to any fee that he may have paid, under provisions of Section 13752, *supra, for a complete certified transcript of the record.*

COLUMBUS, OHIO, February 3, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication of recent date which is as follows:

> "Cases tried in the criminal division of the Dayton Municipal Court are often carried up to the Court of Common Pleas. In such cases the person appealing requests a transcript for which a fee is paid to the city to cover the cost of its preparation. In cases reversed by the higher court the defendant is ordered to recover his costs and all things lost by him from the city. Attorneys for defendants demand that the city refund the amount paid for the transcript.
>
> There being some doubt as to whether the amount paid for such transcripts is a part of the legal cost to be recovered, the bureau will greatly appreciate your views in connection therewith."

You further inform this office that your question is confined solely to a *transcript of the record* necessary to perfect error proceedings in a criminal charge based upon a violation of a municipal ordinance.

Section 1579-53, General Code, relating to the Municipal Court of Dayton, reads as follows:

> "The municipal court shall have jurisdiction of all misdemeanors and of all violations of city ordinances of which police courts in municipalities now have or may hereafter be given jurisdiction. In felonies the municipal court shall have the powers which police courts in municipalities now have or may hereafter be given."