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1. TRANSACTING OR DOING BUSINESS IN OHIO—WHAT CONSTITUTES SAME WITHIN PURVIEW OF FOREIGN CORPORATION ACT—A FACT QUESTION—DETERMINED ON BASIS OF ALL FACTS IN PARTICULAR CASE.
2. FOREIGN CORPORATION—DOING BUSINESS IN OHIO WHEN IT PURCHASES OR DEALS IN REAL ESTATE WITHIN STATE—TRANSACTION IN FULFILLMENT OF CORPORATE PURPOSES AND PART OF ORDINARY BUSINESS.
3. SECRETARY OF STATE—MAY REQUIRE FOREIGN CORPORATION ORGANIZED IN DOMICILIARY STATE TO COMPLY WITH REQUIREMENTS OF FOREIGN CORPORATION ACT—MOTOR TRANSPORT TERMINALS AND FACILITIES—TERMINAL PROPERTY—MOTOR VEHICLES—LOCATED IN OHIO—LEASED TO ANOTHER CORPORATION—INTERSTATE COMMERCE—OHIO LICENSEE—FOREIGN CORPORATION, NO OFFICE OR EMPLOYEES IN OHIO.

SYLLABUS:

1. What constitutes transacting or doing business in Ohio within the purview of the Foreign Corporation Act is a fact question to be determined on the basis of all the facts in the particular case.

2. A foreign corporation may be said to be doing business in Ohio when it purchases or deals in real estate within the state, when the transaction is in fulfillment of its corporate purposes and is a part of its ordinary business.

3. The Secretary of State may require a foreign corporation, organized in its domiciliary state for the purpose, among other things, of owning and leasing motor transport terminals and terminal facilities, to comply with the requirements of the Foreign Corporation Act when such corporation has purchased terminal property and motor vehicles located in Ohio and has leased such property to another corporation engaged solely in interstate commerce, when the vehicles concerned have been licensed in Ohio in the name of said foreign corporation and the stock of both corporations is owned by the same individuals, even though the instruments of purchase and the leases concerned were consummated outside of Ohio and said foreign corporation has no office or employees within the state.

Columbus, Ohio, June 6, 1949

Hon. Charles F. Sweeney, Secretary of State
Columbus, Ohio

Dear Mr. Sweeney:

Your request for my opinion reads as follows:

"An application for a License under the Ohio Foreign Corporation Act together with a certified copy of its Articles of Incorporation and proper check covering the initial fee, has been presented to this office for filing by X company, a corporation organized under the laws of the State of Pennsylvania for the purpose of

'Owning, leasing and operating motor transport terminals, warehouses and automobile service stations and to deal in motor fuels, oils, tires and other automotive supplies; equipment and accessories.'

"This corporation has recently purchased terminal property and motor vehicles which are located in Ohio which was consummated outside of Ohio and said corporation subsequently leased all of the said real property and motor vehicles, which leases were also executed outside of Ohio to another foreign corporation which is presently engaged solely in interstate commerce. Neither the deeds nor the leases which were executed outside of Ohio have been recorded in this State at the present time, however, the motor vehicles have been titled in Ohio in the name of X company. The stock of both corporations is held by the same individuals.

"Your Opinion is requested regarding the liability of the X company to comply with the requirements of the Ohio Foreign Corporation Act. Is the X company required to secure a license under the Ohio act in view of the transactions set forth herein?"

You have asked whether or not under the above facts X corporation should be required to be licensed in Ohio by the following provision of Section 8625-4 of the General Code:

"No foreign corporation not excepted from the provisions of this act shall transact business in this state unless it shall hold an unexpired and uncanceled license so to do issued by the secretary of state. * * *"

At the outset I should probably mention that "doing business", "transacting business" and similar phrases are generally considered to be sy-

nonymous. *LaBelle v. Bar Association*, 288 N. W. 788, 206 Minn. 290, 125 A. L. R. 1023, 1026.

It has been suggested that under principles followed in previous attorney general opinions and Ohio cases, X corporation is not doing such business in Ohio to require it to comply with the Foreign Corporation Act. In this connection I should like to point out that what constitutes transacting or doing business is a fact question to be determined on the basis of all the facts in the particular case. *Short Films Syndicate Co., Inc. v. Standard Film Service Co.*, 39 O. A. 79, 82; *Fifth Avenue-Fourteenth Street Corporation v. U. S.*, 45 F. Supp. 222; *J. R. Watkins Co. v. Hamilton*, 26 So. 2d 207.

The general principle relied upon to sustain the suggestion that X corporation should not be required to be licensed as a foreign corporation doing business in Ohio is that mere ownership of real or personal property situated within the state does not constitute doing business therein. Opinion No. 3566 of the Attorney General rendered on August 16, 1948 and the opinions and cases cited therein are referred to to sustain this contention. In none of these cases was consideration given to the factor, as such, that the foreign corporation concerned was or was not doing within the state that which it was organized specifically to do. For instance, in the 1948 Opinion the then Attorney General had before him a fact situation wherein the foreign corporation concerned was doing precisely that for which it was incorporated, but no consideration was given to the rule later discussed herein, which I am inclined to view as controlling in such situations.

The principle to which I alluded in the preceding sentence may be stated either as a general rule, viz., that a corporation is doing business within a state when it engages in its regular corporate business, or it may be stated as an exception to the rule concerning mere acquisition of real property. See *Fletcher Cyc. Corp.*, Vol. 17, perm. ed., *Foreign Corporations*, section 8486, p. 524. See also sections 8466 and 8485.

“In purchasing, acquiring or dealing in real property within the state, a foreign corporation would undoubtedly be doing business there, within the meaning of regulatory laws, when the transaction is in fulfillment of its corporate purposes and a part of its ordinary business.”

In fact situations such as are presented by the instant inquiry I am inclined to the view that the controlling question should be, is the foreign

corporation engaged in transacting business, or any part thereof, that it was created or organized to transact? This test has been cited with approval in *Spurlock v. Knight & Son, Inc.*, 13 So. 2d 396, 244 Ala. 364; *Crites et al. v. Associated Frozen Food Packers, Inc. et al.*, 191 P. 2d 650, 654; also see 23 Am. Jur., *Foreign Corporations*, sections 365 and 372. See *Asbury Hospital v. Cass County et al.*, 7 N. W. 2d 438, 448, citing other cases and 17 *Fletcher Cyc. Corp.*, for a discussion of the distinction between that which a corporation is created to do and that which it might have authority to do.

In *Hoffstater v. Jewell et al.*, 196 P. 194, 33 Idaho 439, the court denied plaintiff the right to foreclose a mortgage taken by a foreign corporation on domestic property on the ground that the foreign corporation had not complied with the statute concerning doing business in the state at the time it obtained the mortgage. The court noted that in dealing with the land in question the foreign corporation "was doing that for which it was created, and in part at least that which it was especially organized to do." See also *Weiser Land Co. v. Bohrer et al.*, 152 P. 869, 78 Ore. 202.

To revert to the fact situation at hand, it is seen that the foreign corporation concerned was organized to carry on the precise type of business which has brought it into the State of Ohio; that is, to acquire and lease motor transport terminals and incidental facilities. It appears unimportant that said foreign corporation has no office or employees within the state, especially in view of the fact that the operator of its properties is a sister organization whose stock is owned by the same individuals. Also of significance is the fact that the motor vehicles concerned have been registered and Ohio licenses issued in the name of X corporation. With these considerations in mind, I am of the view that X corporation could be required to obtain a license as a foreign corporation doing business in Ohio, consistent with the decisions in *Short Films Syndicate Co., Inc. v. Standard Film Service Co.*, *supra*, and *Clare & Foster Inc. v. Diamond S. Electric Co.*, 66 O. A. 376.

In answer to your question, on the basis of the preceding, I am of the opinion that you may require a foreign corporation, organized in its domiciliary state for the purpose, among other things, of owning and leasing motor transport terminals and incidental facilities, to comply with the requirements of the Foreign Corporation Act when such corporation has purchased terminal property and motor vehicles located in Ohio and has leased such property to another corporation engaged solely in inter-

state commerce, when the vehicles concerned have been licensed in Ohio in the name of said foreign corporation and the stock of both corporations is owned by the same individuals, even though the instruments of purchase and the leases concerned were consummated outside of Ohio and said foreign corporation has no office or employes within the state.

Respectfully,

HERBERT S. DUFFY,
Attorney General.