westerly over and along said Mad River Feeder Canal, including the full width of the bed and embankments thereof, a distance of 6,697 lineal feet, more or less, to a line drawn at right angles through Station 69 plus 97 of Buchanan's survey of said feeder and also includes all of Lot No. 424 of Cooper's addition to the City of Dayton, deeded to the State of Ohio by Louis Schenck, by deed dated August 3, 1842.

Also a one and one-half acre tract of land on the southeast side of the Mad River Feeder Canal and west of Lock No. 21, numbering south from the Loramie Summit Level of the Miami and Eric Canal that was deeded by D. Z. Cooper to the State of Ohio on December 21, 1834.

This lease differs from Lease No. 1 in that it has a clause that provides for the sale of the property under the provisions of House Bill No. 173, passed by the 87th General Assembly of Ohio (112 O. L., pages 120-122).

The lease aforesaid is for the term of ninety-nine years, renewable forever, and calls for an annual rental of $9,019.56, being 4% upon the appraised value of said lands and is payable in semi-annual installments of $4,509.78, in advance, on the first day of May and November of each and every year during the first fifteen-year period of said lease, and thereafter, during the continuance of said lease for an annual rental equal to 4% of the reappraised value of the canal property therein leased, for each respective fifteen-year period. Said lease is dated November 1, 1927, and the first payment of rental therein stipulated is computed from the first day of November, 1927, to the thirtieth day of April, 1928.

You have also submitted evidence that the commission of the City of Dayton has by proper legislation authorized the mayor and the clerk to enter into the leases aforesaid in behalf of said city.

I have carefully examined the leases above referred to and finding them correct in form, and legal, I hereby approve the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1238.

APPROVAL, BONDS OF MEIGS COUNTY, OHIO—$13,000.00.

COLUMBUS, OHIO, November 3, 1927.

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

1239.

FOREIGN CORPORATIONS—MAY RETIRE FROM THE STATE—SECRETARY OF STATE MAY ACCEPT AND FILE CERTIFICATE OF RETIREMENT AND CHARGE FEE—REPEAL OF SECTIONS 11974 AND 11978, GENERAL CODE, UNINTENTIONAL.

SYLLABUS:

In view of the fact that the repeal of Sections 11974 *to* 11978 *of the General Code, by the recent general corporation act, was clearly inadvertent and unintentional,*

foreign corporations still retain the right to retire from the state and the Secretary of State is authorized to accept and file certificates of retirement and to charge for the filing of such certificates the sum of $5.00.

COLUMBUS, OHIO, November 4, 1927.

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

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

> "We are in receipt of a communication from M. M. M. & M., attorneys at Toledo, from which we quote the following:
>
> 'Mr. D—— has requested that I write you concerning the proper procedure for a foreign corporation to follow which wishes to withdraw from doing business in this state. This question is raised by the fact that G. C. 11974-11978 were repealed by recent corporation act.'
>
> Your advice is requested as to the proper reply to be given the inquiry noted above."

As you suggest, a rather unfortunate situation has arisen, due to the repeal of Sections 11974 to 11978 by the recent corporation act. These sections constituted a part of the chapter governing the dissolution of corporations and were apparently inadvertently repealed along with the sections dealing directly with the dissolution of corporations. The writer of the bill evidently assumed that the subject of dissolution alone was treated in the repealed matter. This was not true, since the particular sections to which you refer deal with the retirement of foreign corporations. Because of their illogical location in the Code, their subject matter was overlooked in the preparation of the repeal section of the general corporation act.

Elimination of these sections leaves us without any statutes governing the retirement of foreign corporations. It is quite obvious, however, that courts would not allow this statutory omission to operate so as to prevent the retirement of a foreign corporation seeking so to do. It would be an absurdity to say that a corporation once authorized to do business in the state, because of statutory shortcomings, could not legitimately retire from the field. The only difficulty is in reaching a satisfactory practical solution of the present situation.

I feel fully warranted in applying the principles announced in Lewis' Sutherland Statutory Construction, paragraph 293, which is as follows:

> "A liquor tax law of New York passed in 1896 contained an express repeal of various acts including chapter 744 of the acts of 1895. This act related to a sewer in Rochester and was amended at the same session. Chapter 774 of the acts of 1895 was a liquor statute. The reference to chapter 744 was held to be a clerical mistake and the law was held not to be repealed. An act of Washington to provide for the reclamation of the state's granted school, tide, oyster and other lands contained an express repeal of an act relating to arid lands. The former act as passed did not relate to such lands, but it appeared that as introduced it embraced the arid lands, but the provisions relating to such lands were stricken out of the title and body of the act in course of its passage through the legislature. This was held to show that the legislature did not intend to deal with arid lands and that the repealing clause was left in by mistake and should be disregarded. The title of an act was to amend Sections 643, 644, 646 and 647 of the Code. The body of

the act amended these sections and repealed Sections 243, 244, 246 and 247. This was held to be a mistake, and the repealing clause was corrected by the title and body of the act so as to repeal the same sections as were amended.

'A clause in a statute purporting to repeal other statutes is subject to the same rules of interpretation as other enactments, and the intent must prevail over literal interpretation.' An absolute repeal may be construed as a qualified or partial repeal, where other parts of the statute show such to have been the real intent.

The revised codes of North Dakota included a new revenue law and expressly repealed a great number of acts including 'chapter 132 of the laws of 1890.' One section of this chapter out of a hundred or more provided for the office of district assessor in unorganized counties. If this section was repealed then there was no provision in the law for levying a tax in such counties and the whole revenue law was void. The new act referred to the office as an existing one and plainly intended that all property in the state should be taxed. It was held that the absolute repeal of the whole chapter should be qualified by excluding the section in question from its operation."

In the last paragraph of this quotation reference is had to a North Dakota case which is pertinent here. The court in that opinion reached the conclusion that the legislature certainly did not intend to repeal the provision relating to the office of district assessor. The court states:

"To reach the contrary conclusion would be to impute to the legislature a deliberate intention to pass an unconstitutional law, for its violation of the state constitution would be palpable if it left a portion of the territory of the state without any legislation authorizing the levy and collection of taxes therein."

So in the situation here, the repeal of these sections leaves no machinery whereby a foreign corporation once in the state can retire therefrom. Clearly, it would be unconstitutional to continue to assess franchise taxes against a corporation which did not desire to retain the right to do business in this state. I have no hesitancy in saying that the courts would, under the circumstances, conclude that the repeal in question was not the actual will of the legislature and consequently that the old sections are still in force and effect.

I do not feel, however, that my assertion of what the court would do if the question were presented, is the equivalent of definite court action. That is to say, I do not feel it is my province to state categorically that Sections 11974 to 11978 of the General Code are still in force and effect. I do, however, feel warranted in advising you to continue to receive certificates of retirement presented to your office for filing. In other words, I believe it your duty to continue with respect to the retirement of foreign corporations in the same course which you pursued prior to the repeal of the sections in question.

Some question may be raised as to your right to charge a fee of $5.00 provided by Section 11977 of the General Code, for the filing of the certificate of retirement. It is unnecessary, however, to rely solely upon this section for your authority. Section 176 of the General Code relating to fees to be collected by your office, was amended in 112 O. L. 258. While no specific mention of fees to be paid upon the filing of a certificate of retirement is to be found therein, there is sub-paragraph 9, which reads as follows:

"9. For filing any miscellaneous certificate or paper not required to be recorded, the sum of five dollars."

In my opinion, this section would authorize you to charge the $5.00 fee aside from any question as to the repeal of Section 11977 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1240.

BOND ISSUE—VALID WHEN MINUTES OF BOARD OF EDUCATION MEETING RELATING TO PROPOSED BOND ISSUE, NOT PROPERLY RECORDED, ARE CORRECTED.

SYLLABUS:

1. *If the minutes of the meetings of a board of education in respect of proceedings relating to a proposed bond issue are not properly recorded, as required by Section 4754, General Code, the same should be corrected to conform to the facts.*

2. *If, when so corrected, said minutes show the proceedings to have been in all respects in compliance with law, bonds issued in accordance therewith will be valid obligations of the school district.*

COLUMBUS, OHIO, November 5, 1927.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads as follows:

"Your opinion is desired in regard to the following situation:

The Board of Education of the Lawrence Township Rural School District, in Stark County, desiring to submit the question of a bond issue for the erection and equipment of a fire-proof school building, have passed the resolutions shown in the transcript which accompanies this letter. The bond issue was not submitted to this office.

The various resolutions were furnished the board in typewritten form and were read and adopted at each of the meetings, as indicated in the transcript. The typewritten resolutions were then 'stuffed' into the minute book but were not physically attached thereto, but were always kept in the minute book, which is an old style bound volume. At the meeting following the passage of each of the resolutions shown in the transcript, the same was read by the clerk, and was approved as a part of the minutes of the foregoing meeting, although as stated above none of these resolutions were actually spread upon the minutes for the meeting at which it was passed, nor was it kept in that particular place in the minute book.

The following notations appear upon the minutes under the dates noted, which dates correspond with the dates of the various resolutions as shown by the accompanying transcript, viz.:

July 7, 1926. Regular meeting. Moved by Lindsay, seconded by Farmer that the amount of bond issue be $41,000 for a new school building including