

school which has been suspended by authority of Section 7730, General Code, upon the filing of a proper petition therefor, as provided by the statutes, is mandatory, and that that duty is not in any wise affected or limited by the terms of Section 7600, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4600.

FOREIGN CORPORATION — DOING BUSINESS IN OHIO WITHOUT
COMPLYING WITH FOREIGN CORPORATION ACT — ATTORNEY
GENERAL OR PROSECUTING ATTORNEY MAY PROSECUTE SUCH
CORPORATION.

SYLLABUS:

1. *When it is brought to the attention of the Secretary of State that a foreign corporation has exercised its franchise in Ohio without complying with the provisions of the foreign corporation act and if the penalty imposed by Section, 8625-25, General Code, is not paid after the receipt of notice by the foreign corporation pursuant to the provisions of Section 8625-13, General Code, it is the duty of the Secretary of State to certify such facts to the Prosecuting Attorney of the county in which such corporation has transacted business or has property or a place of business or to the Attorney General of Ohio for appropriate action.*

2. *When it is brought to the attention of the Secretary of State that a corporation which is making an application for a license under the foreign corporation act has theretofore exercised its franchise in Ohio without having complied with such act the Secretary of State may not collect the penalties set forth in paragraphs 1 (a), and 1 (b) of Section 8625-25, General Code, in addition to the penalties imposed by the first paragraph of such section.*

COLUMBUS, OHIO, September 9, 1932.

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

DEAR SIR:—Your recent request for opinion reads as follows:

“Directing your attention to Section 8625-25 of the General Code, of Ohio, your opinion is respectfully requested as follows:

First, where it is brought to the attention of the Secretary of State by his independent investigations or otherwise that a foreign corporation wrongfully exercised its franchise in Ohio by reason of non-compliance with the foreign corporation act, what duty, if any, devolves upon the Secretary of State in respect of collecting the penalty of one thousand dollars and the additional penalty of five hundred dollars each month for such violations of the act as provided in the first paragraph of said section?

Second, where it is brought to the attention of the Secretary of State by his independent investigations or otherwise, that a foreign corporation making application for license under the foreign corporation act has

heretofore wrongfully exercised its franchise in Ohio by reason of non-compliance with such act, should such application be received only after compliance with the penalties provided by subsection 1-a and subsection 1-b therein or do these penalties attach only in the case of such a foreign corporation desiring to prosecute or defend a cause of action arising during the period of such non-compliance?"

Section 8625-13, General Code, provides the duty of the Secretary of State as to liability for payment of installments of license fees and in so far as material reads as follows:

"When any report filed under this act or when other facts coming to the knowledge of the secretary of state, discloses a liability for the payment of an installment of the license fee, the secretary of state shall mail to the corporation a statement of the installment of the license fee then due, together with a statement showing the number of shares of said corporation represented in this state, the number of shares which the corporation has theretofore been authorized to have so represented and the number of additional shares in respect of which an installment of license fee is payable. * * *"

Section 8625-25, General Code, provides certain penalties to be collected from the foreign corporation which transacts business in the state without being licensed, and among other things, provides that when such corporation continues to do business without being licensed the penalties imposed by such section shall be recovered in an action in the name of the state brought in the Court of Common Pleas of Franklin County or in any county in which the corporation transacted business or has property or a place of business, which action is to be brought by the Attorney General or by the Prosecuting Attorney. I do not find in the act, known as the Foreign Corporation Act, any specific provision directing the Secretary of State to certify such action of the Attorney General or to the Prosecuting Attorney for the institution of such action. However, it is an elemental rule of interpretation of statutes, that the entire act is to be read and the legislative intent derived from the entire act and not from any specific section alone. An examination of such act places the administration of the Foreign Corporation Act in the Secretary of State. If this be true it would be the duty of the Secretary of State, when it should come to his attention that a foreign corporation subject to the provisions of the Foreign Corporation Act is doing business within the state without complying with its provisions, to notify such company, pursuant to the provisions of Section 8625-13, General Code, and in appropriate cases certify the matter to the Prosecuting Attorney of the county in which such corporation has transacted business or has property or a place of business, or to the Attorney General, for the institution of a proper action.

In reply to your second inquiry as to whether it is necessary that a foreign corporation making application for a license under the foreign corporation act, which has wrongfully exercised its franchise in Ohio prior to the making of such application, comply with Sections 1 (a) and 1 (b) of Section 8625-25, General Code; a reading of such section discloses that paragraphs 1 (a) and 1 (b) are part of a sentence contained in such section describing the right of a foreign corporation which has not obtained a license pursuant to the provisions of such act to maintain an action. Such sentence reads as follows:

"Before any such corporation shall maintain such action on any cause of action arising at the time when it was not licensed to transact business in this state, it shall pay to the secretary of state a penalty of two hundred fifty dollars and file in his office;

1. If such corporation has not been previously licensed in this state, or such license has been surrendered:

(a) Its application for a license certificate, together with the filing fee as hereinbefore provided, and such information as the secretary of state may require as to the time it began to transact business in this state, as to the number of its issued shares represented in this state. Such application shall not be filed unless accompanied by payment of the license fees on its shares represented in this state, plus a penalty of fifteen per cent thereon.

(b) A certificate from the tax commission that the corporation has paid all franchise taxes which it should have paid had it qualified at the time it began to transact business in this state, together with any penalties assessable on said taxes on account of failure to pay the same within the time prescribed by law, or a certificate of the commission that the corporation has furnished security satisfactory to the commission for the payment of all such franchise taxes and penalties."

The first paragraph of such section 8625-25, General Code, provides the general penalties applicable to foreign corporations doing business in the state without having obtained a license under such act. Penal statutes must not be extended by interpretation beyond the clear import of the language contained therein. *State vs. Dauben*, 99 O. S., 406; *Hall vs. State*, 20 Ohio, 7. Paragraphs 1 (a) and 1 (b) specifically impose the penalties mentioned therein as a condition precedent to the prosecution of a cause of action, and I do not believe the language therein contained will bear the construction of imposing an additional penalty on foreign corporations which have done business in this state without having complied with the provisions of such act.

It is therefore my opinion that:

1. When it is brought to the attention of the Secretary of State that a foreign corporation has exercised its franchise in Ohio without complying with the provisions of the foreign corporation act and if the penalty imposed by Section 8625-25, General Code, is not paid after the receipt of notice by the foreign corporation pursuant to the provisions of Section 8625-13, General Code, it is the duty of the Secretary of State to certify such facts to the Prosecuting Attorney of the county in which such corporation has transacted business or has property or a place of business or to the Attorney General of Ohio for appropriate action.

2. When it is brought to the attention of the Secretary of State that a corporation which is making an application for a license under the foreign corporation act has theretofore exercised its franchise in Ohio without having complied with such act the Secretary of State may not collect the penalties set forth in paragraphs 1 (a) and 1 (b) of Section 8625-25, General Code, in addition to the penalties imposed by the first paragraph of such section.

Respectfully,

GILBERT BETTMAN,

Attorney General.