

Ohio at that time. This latter course would result in charging a fee at this time for shares which were already qualified prior to August 29, 1927. Such a construction would raise a serious constitutional question and would probably be placing a retro-active effect upon Section 185.

You also inquire as to the question of the decrease in the number of shares qualified prior to the effective date of the present sections. In the event of a decrease of originally authorized shares prior to August 27, 1927, the foregoing method of computing may result in a corporation paying a higher fee than under the method suggested in your letter. Applying another illustration, if this company had in 1921 an authorized capital of four million shares, ten per cent of which were represented by business done and property owned and used in the State of Ohio and prior to August 27, 1927, such company decreased its authorized capital to three million shares, then at the effective date of the act under consideration there were only 300,000 shares qualified. If this corporation now increases its proportion of business and property in this state to twenty per cent, its shares represented by property and business done in Ohio would be 600,000 in number and there should be deducted from this number of shares the number last qualified, or 300,000 shares. There would be no authority for deducting from this 600,000 shares the amount of 400,000 shares, the amount qualified at the time of the initial filing.

Specifically answering your questions, I am of the opinion that:

1. The fee to be charged a foreign corporation, qualified to do business in Ohio, for an increase of the proportion of its capital stock represented by property used and business done in this state, should be determined by computing such total number of shares as are so represented after such increase and deducting therefrom such number of shares as have been theretofore qualified.

2. In the event such corporation was so qualified prior to August 29, 1927, the effective date of Section 185, General Code, in its present form, and such corporation increases the proportion of its capital stock represented by property used and business done in this state after August 29, 1927, the number of shares so represented on August 29, 1927, should be determined in computing the number of shares which have been theretofore qualified.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

982.

GILL NET—HOW SIZE OF THE MESH DETERMINED AFTER MARCH 15,  
1930.

**SYLLABUS:**

*On and after March 15, 1930, the size of the mesh of a gill net should be determined by exerting a one pound strain on the third mesh of three consecutive collapsed meshes parallel with the selvage, and measuring the total length of these three meshes from the knot on one end of the series to the knot on the other, and by taking the average length of these three meshes so measured.*

COLUMBUS, OHIO, October 4, 1929.

HON. J. W. THOMPSON, *Chief, Division of Fish and Game, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which reads as follows:

“We hereby respectfully request an interpretation of Section 1428-5,

G. C., and particularly as refers to the first paragraph of said section which reads as follows :

'Sec. 1428-5. On and after March fifteenth, 1930, the size of the mesh of all gill netting had in possession in this state or used in fishing in any of the waters thereof, shall be determined by exerting a one-pound strain on three consecutive collapsed meshes parallel with the selvage and measuring the total length of these stretched meshes from the knot on one end of the series to the knot on the other end, and the size of the mesh of any gill net shall be the average length of the three meshes so measured. \* \* \* "

The question which arises in our minds is whether the one pound strain mentioned in this paragraph shall apply to three adjacent meshes in a row and average taken of the total stretched measure, or whether it shall apply to the strain applied on three meshes separately and the average taken of the stretched measure of the three meshes."

Section 1428-3 of the General Code, provides as follows :

"On and after March fifteenth, 1930, it shall be unlawful for any person to have in possession in this state or use in fishing in any of the waters therein where fishing with nets is licensed by law, any gill net or gill netting having meshes when stretched and measured as herein prescribed, of a less length than three and one-sixteenth inches, or any gill net or gill netting having meshes of a length between three and one-eighth and four and three-quarter inches."

Section 1428-5 of the General Code, in so far as the same is pertinent to your inquiry, provides as follows :

"On and after March fifteenth, 1930, the size of the mesh of all gill netting had in possession in this state or used in fishing in any of the waters thereof, shall be determined by exerting a one-pound strain on three consecutive collapsed meshes parallel with the selvage and measuring the total length of these stretched meshes from the knot on one end of the series to the knot on the other end, and the size of the mesh of any gill net shall be the average length of the three meshes so measured. \* \* \* "

The purpose of this legislation is to conserve the small fish in the waters of Ohio by preventing the catching of them by means of nets. This is accomplished by providing that the mesh in the net shall be of sufficient length to permit small fish to escape. The Legislature provided by Section 1428-5, supra, the method to be employed in measuring the meshes in the net. Generally, a mesh is measured by placing a rule of a fixed length into the mesh, and if the mesh can be stretched sufficiently so that one is able to place the rule between the upper and lower knot of the mesh when the mesh is collapsed, then the mesh is the length desired. However, the Legislature of this state desired, knowing that the meshes in the net may be of different lengths, that the average length of these collapsed meshes should determine the length of the mesh as required by Section 1428-3, supra.

The language of Section 1428-5, supra, clearly provides that the size of the mesh should be determined by exerting a one pound strain on three consecutive collapsed meshes, and measuring the total length of the stretched meshes to the knot on one end of the series to the knot on the other end, the average length of the three meshes so measured to be the size of the mesh. You will note that this language is used in Section 1428-4, "and measuring the total length of these stretched meshes from the

knot on one end of the series to the knot on the other end." This language cannot be construed to mean that the size of the mesh is to be determined by measuring three separate meshes and taking the average length of the meshes so measured.

In specific answer to your inquiry, I am of the opinion that the size of the mesh of a gill net should be determined by exerting a one pound strain on the third mesh of three consecutive collapsed meshes parallel with the selvage, and measuring the total length of these three meshes from the knot on one end of the series to the knot on the other, and by taking the average length of these three meshes so measured, and not by exerting the one pound weight on three separate collapsed meshes and taking the average length of the separate meshes so measured.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

983.

APPROVAL, BONDS OF NAPOLEON VILLAGE SCHOOL DISTRICT,  
HENRY COUNTY—\$50,000.00.

COLUMBUS, OHIO, October 4, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

984.

ROAD MACHINERY—PURCHASED WITHOUT COMPETITIVE BIDDING  
—SELLER'S RIGHT TO SET-OFF COST OF REPAIRS TO SUCH MA-  
CHINERY WHEN FINDING MADE FOR MONEY ILLEGALLY PAID  
BY TOWNSHIP TRUSTEES.

**SYLLABUS:**

*Where township trustees purchase road machinery without complying with the provisions of Section 3373, General Code, and the property is returned to the seller and a finding made against the seller, the seller is entitled to plead as a setoff the cost of repairs made on said property during possession by the township if such repairs were ordered by the township in a separate contract which complied with the statutes.*

COLUMBUS, OHIO, October 4, 1929.

HON. GEO. E. SCHROTH, *Prosecuting Attorney, Tiffin, Ohio.*

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

"The trustees of \_\_\_\_\_ Township, Seneca County, Ohio, in which township Tiffin is located, some time ago entered into a contract with the \_\_\_\_\_ Machinery Co., for the purchase for \$4275.00 of a shovel to be used in township work. No advertisement for competitive bidding was