

981.

FOREIGN CORPORATION—FEE CHARGEABLE FOR INCREASING CAPITAL STOCK—HOW COMPUTED—SPECIFIC CASE IN WHICH CORPORATION SEEKING INCREASE, QUALIFIED SHARES BEFORE EFFECTIVE DATE OF SECTION 185, GENERAL CODE.

SYLLABUS:

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.*

COLUMBUS, OHIO, October 4, 1929.

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

DEAR SIR:—Your letter of recent date is as follows:

“The F. W. W. Company, a New York corporation originally qualified in this state through Sections 178 and 183 of the General Code, is at the present time seeking to make a filing under G. C. Section 185 on an increase in proportion of shares representing property and business in Ohio.

A previous filing under 185 under date of Sept. 2, 1921, gave a .0650 and the then authorized number of shares in the number of one million and one hundred twenty thousand (1,120,000). June 21, 1923, there was a decrease to one million shares (1,000,000). June 11th, 1924, there was filed an amendment increasing the number of shares from one million to four million. As there was no increase in the total par value there was, of course, at that time no fee payable other than a \$5.00 fee for the filing of the certified copy of the amendment.

Having regard to the above circumstances, your attention is directed to Opinion No. 921 under date of Aug. 26, 1927, and a review of same in Opinion No. 1677 under date of Feb. 4, 1928, both opinions of your predecessor. If the formula for computing fees given in Opinion No. 921 is strictly followed the basis of calculating fees on the present proposed filing of 185 would be the number of shares evidenced by the filing of form 185, Sept. 2, 1921. Attorneys for the company contend, and I believe rightly so, that the number of shares qualified, that is the increased number of shares indicated above at the time of the effective date of the present Sections 184 and 185 should be the basis of the calculation. If the number of shares evidenced by the filing of Sept. 2, 1921, is considered there would be a fee due of \$13,066.40. On the other hand, if the number of shares actually authorized and evidenced by filings in this office prior to the effective date of the present Section is taken into consideration, there will be a fee due of \$11,194.40. This last amount the company has tendered. You will note that there is a difference of almost \$2,000.00 in the computations.

Your very early opinion is requested and in passing might I ask that you

also cover the question of decrease as well as of increase in the number of authorized and qualified shares prior to the effective date of the present sections."

The opinion of my predecessor to which you refer, appearing in Opinions of the Attorney General, 1927, Vol. II, p. 1614, was in response to a communication from you as to the proper method to be employed in computing fees payable by foreign corporations under the provisions of Senate Bill 295, enacted by the 87th General Assembly. In this opinion, my predecessor commented upon the fact that Sections 184 and 185, General Code, require payment upon the basis of the number of shares rather than upon the value of the capital stock of a corporation as theretofore. In considering the fee to be charged a corporation seeking qualification to do business in Ohio under the provisions of these sections, two specific illustrations were discussed. In each of these illustrations a corporation had qualified prior to August 29, 1927, the effective date of the amendment of these sections by the 87th General Assembly, and after such date had increased its capital or increased the proportion of its capital stock represented by property owned and used and business transacted in this state. Upon consideration of these specific illustrations, the following conclusion was reached:

"In order, therefore, to determine the amount of the fee for an increase of proportion, it is necessary to compute the proportion of the authorized capital stock as it existed at the time of the initial qualification in spite of the fact that that determination was not material at the time the initial qualification was had."

These conclusions, in which I concur, are applicable to the illustrations considered in the opinion, that is, in cases where there had been no change in the authorized number of shares or the proportion of capital stock represented by property owned and used and business transacted in this state in the interval of time between the initial qualification and the effective date of Senate Bill 295, as enacted by the 87th General Assembly.

Considering the facts now presented, it appears that the corporation in question in 1924 increased its authorized shares from 1,120,000 to 4,000,000. The fee then charged was the fee provided for by the then existing sections of the General Code applicable thereto. While concurring with my predecessor upon the facts considered in the opinion referred to, I am unable to conclude that this opinion is authority for saying that here you must disregard such shares as were qualified at the time Section 185, General Code, became effective in its present form. It is my view that on August 29, 1927, if the proportion of property used and business done in Ohio by this corporation under consideration amounted to, for instance, ten per cent, then there were qualified on that date 400,000 shares, ten per cent of the then authorized four million shares. In the event this company has now increased this proportion of its property owned and used and business done in Ohio to, say twenty per cent, then 800,000 of its shares are now represented by business done and property owned and used in Ohio. From this 800,000 shares should be deducted the number of shares already qualified, viz. 400,000. The remaining 400,000 shares would, in this instance, be the number of shares to be taken into consideration in determining the fee to be paid for such increase in accordance with the provisions of Section 185. I am clearly of the view that after determining the number of shares represented by the property and business in Ohio, after this increase, there is no authority for deducting from such number of shares the number qualified in 1921 which would be a proportion of 1,120,000, depending upon the percentage of the corporation's business done or property owned in

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,