

3186.

APPROVAL, BONDS OF CITY OF LORAIN, LORAIN COUNTY, OHIO—  
\$7,500.00.

COLUMBUS, OHIO, September 11, 1934.

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

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3187.

APPROVAL, BONDS OF CITY OF LORAIN, LORAIN COUNTY, OHIO—  
\$10,500.00.

COLUMBUS, OHIO, September 11, 1934.

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

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3188.

APPROVAL, BONDS OF CITY OF ELYRIA, LORAIN COUNTY, OHIO—  
\$75,000.00.

COLUMBUS, OHIO, September 11, 1934.

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

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3189.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,  
OHIO—\$10,000.00.

COLUMBUS, OHIO, September 11, 1934.

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

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3190.

FOREIGN CORPORATION ACT—CORPORATION ENGAGED IN INTFR-  
STATE COMMERCE DOES NOT HAVE TO COMPLY WITH—EFFECT  
OF LICENSE GRANTED PRIOR TO SAID ACT.

*SYLLABUS:*

1. *There is no legal authority for the issuance, under the Foreign Corpora-*

*tion Act (Section 8625-1 to 8625-33, G. C.) of a license to engage in business in Ohio to a foreign bank, trust company, or a public utility engaging in this state in interstate commerce.*

2. *When such license was issued to a foreign corporation to engage in business in this state by virtue of the authority of a former law, since repealed, such licenses expire upon the repeal of the former law except to the extent provided by Section 8625-10, General Code.*

3. *A foreign bank, trust company, or public utility company engaged in this state in interstate commerce, is not required to file the annual reports required of certain corporations by Section 8625-7, General Code.*

COLUMBUS, OHIO, September 11, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion reading:

“At the time of the enactment of the present foreign corporation act (G. C. 8625-1, et seq.) there were qualified to transact business in the state of Ohio a number of foreign banks, trust companies and public utilities which are exempt from the provisions of the new act under G. C. 8625-3.

This office has been requested from time to time to make a ruling regarding the necessity of such companies to make the annual report required by section 8625-7.

It was our thought that the “license” of such companies under the present foreign corporation act was a nullity in law but several of them insist that they are still licensed to transact business in Ohio but deny the necessity of making the annual report required by the act.

We shall appreciate having your opinion regarding the status of such companies under this act.”

At the time of the enactment of the Foreign Corporation Act (Sections 8625-1 to 8625-33 G. C.) the legislature was evidently of the opinion that certain types of foreign corporations should not be authorized to qualify to do business in Ohio, pursuant to its terms; and in Section 8625-3, General Code, so stated. Such section reads:

“This act shall not apply to corporations engaged in this state solely in interstate commerce, nor to banks, trust companies, building and loan associations, title guarantee and trust companies, bond investment companies, insurance companies, nor to public utility companies engaged in this state in interstate commerce.”

The legislature may have had various reasons for exempting the types of corporations mentioned in such section from the provisions of such act. With respect to banks and trust companies, the legislature had already made provisions under which such corporations may qualify. (Section 710-17 and Sections 710-150 to 710-154, both inclusive, G. C.). It is apparent that the legislature intended that foreign banks and trust companies should qualify to do business in this state under the special law (Section 710-17 and Sections 710-150 to 710-154, G. C.) rather than under the general law (Sections 8624-1 et seq., G. C.).

With respect to foreign public utility companies, it might be well to observe

that only such corporations engaged in this state in interstate commerce, are exempt from the provisions of the Foreign Corporation Act. I therefore, assume that the public utility corporations to which you refer are "engaged in this state in interstate commerce," and do not wish to be interpreted as holding that such foreign corporations engaged in this state in intrastate commerce are not subject to the provisions of the Foreign Corporation Act.

In the case of public utilities companies "engaged in this state in interstate commerce" it would appear that an entirely different reason motivated the legislature in the enactment of Section 8625-3, General Code. The Foreign Corporation Act is a licensing or privilege tax, upon the privilege granted by the state of Ohio to a foreign corporation to engage in business in the state. The right to regulate interstate commerce has been granted by the states to the federal government. This right of the federal government is exclusive. *Nelson & Randolph vs. Kentucky*, 278 U. S. 245.

While a state may levy a tax on property having a situs within its boundaries, whether or not such property is used in interstate commerce, it cannot levy a tax which is in effect a tax for the privilege of transacting such commerce. Such would violate the provisions of the federal constitution. *Adams Express Company vs. Ohio*, 166 U. S. 218; *Nelson & Randolph vs. Kentucky*, *supra*; *Sprout vs. South Bend*, 277 U. S. 163.

The express purpose of the Foreign Corporation Act is the regulation of the business of foreign corporations within this state. If this business is interstate in its nature, the state has no power to regulate it. From the language of Section 8324-3, General Code, it is evident that the legislature recognized this lack of power and, in consideration thereof, expressly exempted from the provisions of such act, public utility corporations so engaged.

Since the act itself expressly exempts foreign banks, trust companies and also public utilities corporations engaging in this state in interstate commerce from the provisions of the "Foreign Corporation Law," it is evident that they are not subject to any of its provisions. I am unable to see by what authority they could be compelled to file the report required by Section 8625-7, General Code, since such section is one of the sections of the Foreign Corporation Act.

The present "Foreign Corporation Act" (Sections 8625-1 to 8625-33, G. C.) repealed the former Foreign Corporation Act (former sections 186 to 191, 5508, 5521 and 5523, G. C.) The repeal of such act would avoid any licenses thereunder, except as preserved by provisions of Section 8625-10, General Code, part of the present act. Such former licenses were valid only by reason of the provisions of the former act. The present law makes no provision authorizing the licensing of any foreign bank, trust company or public utility company engaged in this state in interstate commerce. It is thus evident that any license, purporting to have been issued by authority of the "Foreign Corporation Act" to a foreign bank, trust company, or public utility engaged in this state in interstate commerce, is without authority of law and void.

Specifically answering your inquiry, it is my opinion that:

1. There is no legal authority for the issuance, under the Foreign Corporation Act (Sections 8625-1 to 8625-33, G. C.), of a license to engage in business in Ohio to a foreign bank, trust company, or a public utility engaging in this state in interstate commerce.

2. When a license was issued to a foreign corporation to engage in business in this state by virtue of the authority of a former law, since repealed, such licenses expire upon the repeal of the former law except to the extent provided by Section 8625-10, General Code.

3. A foreign bank, trust company, or public utility company engaged in this state in interstate commerce, is not required to file the annual reports required of certain corporations by Section 8625-7, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

3191.

INDIGENT PERSON—WITHOUT LEGAL SETTLEMENT RECEIVING  
MEDICAL ATTENTION—COUNTY RATHER THAN TOWNSHIP  
LIABLE.

SYLLABUS:

*Township Trustees are not obligated to pay for hospital and surgical services in an appendicitis case when such person receiving services had not acquired a legal settlement in the State of Ohio, but such is an obligation of the county wherein such person is residing if the required notice is furnished the county commissioners of the county wherein such person is residing.*

COLUMBUS, OHIO, September 11, 1934.

HON. RAYMOND E. LADD, *Prosecuting Attorney, Bowling Green, Ohio.*

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

"The Trustees of Henry Township, Wood County, have been notified by a hospital in Findlay, Hancock County, that it will look to them for payment for the operation and hospital services of a person who has resided in Henry Township, Wood County, since March 1st, 1934.

The facts are as follows: In June, 1933, a man and wife, legal residents of Boston, Mass., sold out their property and came to Findlay, Hancock County, and lived there for a period of nine months, at which time their finances became exhausted and they moved in with their son-in-law, John Buck, at North Baltimore, Henry Township, Wood County, Ohio, on March 1st, 1934 and have resided there up to the present time. On or about Monday, August 6th, 1934, the wife had an attack of acute appendicitis and was taken to Findlay hospital and operated upon.

Question—Are the Trustees of Henry Township, Wood County, Ohio, liable for the hospital bill and surgical services?

I have been unable to find any opinion covering this specific question. I do find in Section 3479 of the General Code that when a person has, for a period more than one year, not secured a legal settlement in any county, township or city in the state, he shall be deemed to have a legal settlement in the county, township or city where he last had such settlement.

You will note from the facts stated above that this man and wife have resided in the State of Ohio for a period of about fourteen