

relation to the transaction further than to show that it was not selling to the Springfield Realty Company an automatic sprinkler system manufactured by itself in its home state, or in any other state. * * * This contract, however, contemplated by its terms performance by the Phillips Company within the State of Michigan, and the evidence relating to that company's method of performance clearly shows that no part thereof was merely incident to the main transaction, but rather that the contract, in its entirety, was a business transaction, local in its nature and indivisible in character."

While this is not a tax case, nevertheless it shows the reasoning of the Court in determining what is "doing business" within the state.

Respectfully,

EDWARD C. TURNER,
Attorney General.

755.

CORPORATION—CHANGING AUTHORIZED CAPITAL STOCK CONSISTING OF COMMON AND PREFERRED STOCK TO COMMON STOCK OF PAR VALUE.

SYLLABUS:

Outline of the necessary certificates by which a corporation having an authorized capital stock of \$950,000.00, consisting of \$400,000.00 of common stock, all issued and outstanding, and \$550,000.00 of preferred stock, of which \$546,000.00 has been issued, and \$28,200.00 of which has been redeemed and canceled, may change its authorized capital stock to \$500,000.00 of common stock, consisting of 5000 shares of the par value of \$100.00 each.

COLUMBUS, OHIO, July 21, 1927.

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

DEAR SIR:—I have your request for my opinion as to the certificates and other papers necessary to be filed under the following state of facts:

An Ohio corporation had an authorized capital stock of \$950,000, consisting of 4000 shares of common stock of the par value of \$100.00 each and 5500 shares of preferred stock of the par value of \$100.00 each. The entire \$400,000 of common stock was issued and outstanding and \$546,000 of the preferred stock was issued and outstanding, leaving \$4000 of unissued preferred stock, or a total of \$946,000 of stock issued and outstanding. The corporation proceeded, under the authority contained in its articles of incorporation to redeem and cancel 282 shares of the preferred stock. This left the corporation with an outstanding capital stock of \$917,800, of which \$400,000 was common stock and \$517,800 was preferred stock issued and outstanding.

The corporation now desires to so amend its articles of incorporation and reduce its stated capital so that it will have \$500,000 of authorized capital stock consisting of 5,000 shares of the par value of \$100.00 each. This is to be accomplished by the surrender by the stockholders of all of the outstanding preferred stock and the issuance in lieu thereof to such stockholders of \$414,240.00 of common stock, i. e., on the basis of eight shares of common

stock for each ten shares of preferred stock surrendered, and by the surrender by the common stockholders of 85% of the stock held by them and the acceptance of new certificates on the basis of one and one-half shares of common stock for each ten shares held by them.

The corporation purchased \$15,300.00 of its common stock, which is now in its treasury, leaving \$384,700.00 of common stock in the hands of shareholders, \$326,995.00 of which will be surrendered, leaving \$57,705.00 of common stock outstanding in the hands of shareholders and \$28,055.00 of treasury and unissued common stock, being \$15,300.00 of treasury stock and \$12,755.00 of unissued stock.

All of the outstanding indebtedness of the corporation has been paid and it is stated that all of the holders of both preferred and common stock have consented in writing to the above plan and that all outstanding shares of the stock of the company, both common and preferred, will be voted in favor of the proposed action."

Under Section 8623-37, General Code, every corporation is required to have and to carry upon its books a stated capital which shall be equal to "the aggregate par value of outstanding shares having par value, including therein treasury shares." Prior to the redemption of the preferred stock above mentioned, the stated capital of the corporation under this provision would have been \$946,000.00.

Section 8623-39, General Code, provides as follows:

"A reduction of stated capital shall be authorized as follows:

A. In case it is to be effected by redeeming shares subject to redemption under the articles, by such resolution or other action, if any, as the articles may require or prescribe.

* * * * *

If the articles require shares to be cancelled upon redemption, a like certificate of reduction shall be filed stating that such cancellation has been made and such certificate shall operate as a certificate of amendment of the articles, and shall reduce the authorized number of shares of a corporation by the number of shares cancelled."

There should, therefore, be filed by the corporation a certificate of reduction of stated capital by redemption and cancellation of shares, which certificate should be signed by the president or a vice president, and the secretary or an assistant secretary, and should state:

- (a) The amount of stated capital of the corporation prior to such reduction.
- (b) The amount of stated capital to remain after such reduction.
- (c) The method by which such reduction is to be effected, including a copy of the resolution of reduction and a statement of the manner of its adoption.
- (d) That the stock redeemed has been cancelled as required by the articles of incorporation.

As provided in Section 8623-39, General Code, this certificate may be combined with the certificate of amendment hereinafter mentioned.

When this certificate has been filed, the corporation will then have an authorized capital stock of \$921,800, consisting of \$400,000 of common stock and \$521,800

of preferred stock. However, the stated capital of the corporation will be \$917,800, being the amount of its authorized capital stock, less the \$4,000 of unissued preferred stock above mentioned. There should then be filed a certificate of amendment to the articles of incorporation, as provided in Section 8623-15, General Code, which should be signed by the president or vice president, and the secretary or assistant secretary, which certificate should contain:

(a) A copy of the resolution of amendment and a statement of the manner of its adoption.

(b) A statement of the amount of stated capital which the corporation will have after the amendment becomes effective, which in this case would still be \$917,800.00. (Sections 8623-4 and 8623-37.)

(c) The authorized capital stock of the corporation subsequent to the amendment, which in this case would be \$500,000 of common, consisting of 5,000 shares of the par value of \$100 each. (Section 8623-4.)

It will be necessary for the corporation, after the exchange is completed, further to reduce its stated capital. Under the provisions of Section 8623-39, General Code, an amendment of articles and reduction of stated capital may be included in one certificate filed in the office of the secretary of state. The certificate of amendment should therefore either contain a certificate of reduction of stated capital or a separate certificate should be filed for that purpose. The following information should be contained in the certificate of reduction or in the combined certificate of amendment and reduction:

(a) The amount of stated capital of the corporation prior to such reduction, which in this case would be \$917,800.00, being the \$400,000 of the common stock issued and outstanding and the \$517,800 of preferred stock issued and outstanding under the articles of incorporation prior to the amendment.

(b) The amount of stated capital to remain after such reduction, which in this case would be \$487,245.00, consisting of the \$414,240.00 issued in exchange for the preferred stock, the \$57,705.00 remaining in the hands of the common stockholders after the surrender of the 85 percent, and the \$15,300.00 of common stock purchased by the Company and now in its treasury.

(c) The method by which such reduction is to be effected, including a copy of the resolution of reduction and a statement of the manner of its adoption.

The method to be stated in the certificate would in this case be a recital of the plan to exchange the preferred stock for common stock, as above outlined, and the surrender by the common stockholders of 85 per cent of their stock. This method of reduction of the stated capital is authorized by the provisions of Section 8623-39, General Code, which provides in part as follows:

“A reduction of stated capital shall be authorized as follows:

* * * * *

2. By the voluntary surrender by each and any holder of shares of one or more classes of his shares, and issuing to him in lieu thereof of a decreased number of shares.

* * * *

6. In any other way not repugnant to law.”

I have passed the question of the purchase of the \$15,300.00 of common stock by the corporation, because of the statement in the statement of facts that the debts have been paid and that all stockholders have ratified the action and have agreed to and voted for the plan of reorganization.

I can see no objection to the surrender by the corporation of 85 per cent of this \$15,300.00 of common stock, and the further reduction of the stated capital in the sum of \$13,005.00.

When the foregoing certificates, or a certificate combining the above amendments and reductions have been filed, it is my opinion that the corporation will have accomplished the desired result and if certificates are presented to you substantially in the form as stated above, it is my opinion that you should accept and file the same.

Respectfully,

EDWARD C. TURNER,

Attorney General

756.

BOARD OF EDUCATION—CITY DISTRICT—ANNEXATION OF TERRITORY—INDEBTEDNESS.

SYLLABUS:

When territory is annexed to a city, such territory thereby becomes a part of the city school district, and the legal title to the school property in such territory for school purposes becomes vested in the board of education of the city school district. Any indebtedness on the school property in the territory annexed should be assumed by the board of education of the city school district, but where there is no school property in the territory annexed, there is no provision for the city school district to assume any portion of the indebtedness.

COLUMBUS, OHIO, July 21, 1927.

HON. W. S. DUTTON, *Prosecuting Attorney, Lancaster, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“More than two years ago the people residing in a certain described section of Hocking Township, Fairfield County, Ohio, petitioned for and were annexed to the City of Lancaster, Ohio.

Hocking Township at that time had a bonded indebtedness of \$11,000.00 for school bonds.

The taxable valuation of the annexed territory was \$580,000.00.

The annexed territory was not a municipality but a rural suburb.

Please inform me if in your opinion the city of Lancaster is liable in any way for the payment of their proportionate share of the said bonded indebtedness of the annexed territory.”

Your attention is called to Section 4690 of the General Code, which reads as follows:

“When territory is annexed to a city or village, such territory thereby becomes a part of the city or village school district, and the legal title to school property in such territory for school purposes shall be vested in the