

3033.

SECURITIES LAW—WHEN STOCK OF OHIO CORPORATION IS NOT EXEMPT UNDER PROVISIONS OF SECTION 6373-2f OF THE GENERAL CODE.

SYLLABUS:

The stock of an Ohio corporation may not be exempted from the provisions of the Securities Law of Ohio under section 6373-2f, if its stock is to be issued in exchange for stock of an Ohio corporation, part of whose stock is represented by property and assets not located in Ohio.

COLUMBUS, OHIO, December 22, 1925.

HON. NORMAN E. BECK, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date submitting to this department the following inquiry:

“In view of the provisions of Section 6373-2f of the General Code providing that the stock of an Ohio corporation may be exempt when it is not issued directly or indirectly (among other things) in payment for property not located in Ohio, is A, an Ohio corporation, authorized to file an exemption certificate under said section when said corporation intends to dispose of its capital stock (without commission) to stockholders of B, an Ohio corporation, in exchange for B’s outstanding capital stock, when B’s capital stock is represented by property and assets located either wholly or in part in another state?

“In the above question you may assume (1) that all of the stockholders of A are located in Ohio; (2) that only a part of the stockholders of B are located in Ohio.”

Section 6373-2 of the General Code, so far as necessary for the answer to your question, is as follows:

“The term ‘dealer’, as used in this act, shall be deemed to include any person or company, except national banks, disposing or offering to dispose, of any such security, through agents or otherwise, and any company engaged in the marketing or flotation of its own securities either directly or through agents or underwriters or any stock promotion scheme whatsoever, except:
* * *

“(f) The issuer, organized under the laws of this state where the disposal in good faith and not for the purpose of avoiding the provisions of this act, is made for the sole account of the issuer, without any commission and at a total expense of not more than two percentum of the proceeds realized therefrom plus five hundred dollars *and where no part of the issue to be disposed of is issued, directly or indirectly, in payment for patents, services, good will, or for property not located in this state;* * * *”

Any exemption granted by the terms of this act will be strictly construed, and unless an issuer can bring himself wholly within the provisions of the statute he may not be deemed to be exempt under the act. Two possibilities suggest themselves in connection with your inquiry:

First, it is obvious that a plan such as you outline might be devised for the specific purpose of avoiding the provisions of this act, both as to the issuance of stock in payment for patents, services or good will, or for property not located in this state. In such case there can be no doubt but that the plan renders the issuer subject to the terms of the act, and requires him to qualify as a dealer.

The second possibility is that the plan adopted may not be intended for the purpose of evading the provisions of the act, and the amount of property outside of Ohio which is represented by B's capital stock may be comparatively slight. The language of the act seems to indicate an intention to deny this exemption to any issuer if *any* part of the issue is disposed of *indirectly* for purchase of property not located in this state. Therefore, however little the property may be represented by the stock of B, we must conclude that the act intends to deny to the issuing corporation the exemption provided for by this paragraph.

You are therefore advised that under the conditions stated in your letter, the company may not be properly exempted from the operation of the Securities Law.

Respectfully,

C. C. CRABBE,

Attorney General.

3034.

APPROVAL, BONDS OF VILLAGE OF WORTHINGTON, FRANKLIN COUNTY, \$13,596.37.

COLUMBUS, OHIO, December 24, 1925.

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

3035.

DISAPPROVAL BONDS OF VILLAGE OF PERRY, LAKE COUNTY, \$8,400.00

COLUMBUS, OHIO, December 23, 1925.

Re: Bonds of Village of Perry, Lake County, \$8,400.00.

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

GENTLEMEN:—An examination of the transcript for the foregoing issue of bonds discloses that these bonds are issued in anticipation of the collection of assessments for sidewalks.

Proceedings have been had in accordance with the delinquent proceedings for construction of sidewalks under the provisions of section 3853 et seq. G. C. Section 2 of the assessing ordinance provides in part as follows:

"That the total assessments against each lot or parcel of land shall be payable in cash within thirty days from and after the passage of the ordinance, or at the option of the owner in ten annual installments with interest at the rate of six per cent per annum at the same rate as shall be borne by the bonds to be issued in anticipation of the collection of same."