in and for the state and county; and all other expenses of the board which are not chargeable to a political subdivision in accordance with this section, shall be paid in the same manner as other county expenses are paid.

* * * * * * * * * * * *."

Here again the legislature has used the word "shall" in expressly giving to the boards of elections the right to fix the amount of revenue they are to receive from the subdivision. This right is only limited as to the amount being sufficient to provide for the necessary and proper expenses of the board. The authority to appeal to the Court of Common Pleas in the event of a failure on the part of the commissioners to appropriate funds to take care of expenses of the board, should be invoked only when there is a controversy as to whether or not the funds sought to be appropriated are, in fact, for necessary and proper expenses. In the absence of any controversy with respect to whether or not the funds are for necessary and proper expenses, there is no necessity for an appeal to the court of common pleas because the duty on the part of the commissioners to appropriate is mandatory.

These items of necessary expense of boards of elections are payable out of the general fund of the county and the county commissioners shall include in the general levy the amount certified by the board of elections to be necessary for such purposes. Section 5625-5, General Code, relating to the general levy for current expenses, provides inter alia: "Such general levy shall include * * * the amounts necessary for general, special and primary elections."

It is accordingly my opinion that the county commissioners do not have authority to arbitrarily change the amounts requested and submitted in the budget of the board of elections for the necessary and proper expenses of the board and substitute their own arbitrary figures in lieu of the amounts requested.

Since your second and third questions are predicated upon an affirmative answer to your first question, they need not be answered herein.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4024.

FOREIGN CORPORATION—TITLE GUARANTY COMPANY—NOT ADMITTED IN OHIO TO GUARANTEE REAL ESTATE TITLES.

SYLLABUS:

A foreign corporation can not legally qualify under the laws of this state for the purpose of engaging in the business of guaranteeing title to real property. (Opinions of the Attorney General for 1928, *page* 2885 *approved and followed.)*

COLUMBUS, OHIO, February 2, 1932.

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

DEAR SIR:—We are in receipt of your communication, which reads as follows:

"Under date of December 21, 1928, your predecessor in office, the Hon. Edward C. Turner, then Attorney General, advised the Secretary of State to the effect that a foreign corporation can not be admitted to

this state for the purpose of engaging in the business of guaranteeing title to real property.

At the present time, the Mortgage-Bond & Title Corporation of Baltimore, Maryland, are seeking to enter the state in order to transact the title insurance business in Cuyahoga County, Ohio and the corporation has expressed its willingness to comply with the laws of Ohio governing title guaranty and trust companies in particular making no objection to making the required deposit with the Treasurer of the State of Ohio.

Attorneys for the company, perhaps in view of the fact that a new foreign corporation act went into effect August 6, 1931, have questioned the legality of the opinion of Mr. Turner and have submitted a memorandum or brief setting forth their contentions on behalf of the company named above. The original copy of the memorandum in question you will find herewith.

It is requested that having regard to considerations mentioned above and those set out in memoranda of counsel that you as the present Attorney General review the opinion above referred to and advise specifically as to whether or not you are at this time in accord with the conclusions contained therein."

I have reviewed the lengthy but clearly reasoned opinion of my immediate predecessor in office rendered you under date of December 21, 1928 (Opinions of the Attorney General for 1928, page 2885). It was held as stated in the syllabus that:

"A foreign corporation cannot be admitted to this state for the purpose of engaging in the business of guaranteeing titles to real property."

At that time the general provisions of the statutes relating to the admission and qualification of a foreign corporation to do business in Ohio were contained in Sections 178 to 191, inclusive, of the General Code. Such sections specifically exempted certain corporations from the effect of their provisions by the use of the following language:

"This section shall not apply to foreign banking, insurance, building and loan, or bond investment corporations."

The reasoning of the above mentioned opinion is that title guarantee business is a type of insurance. While specific provision is made for the qualification of a foreign corporation to do business in Ohio there is no provision for a foreign corporation doing a title business to qualify in Ohio. I do not believe it is any the less insurance merely because the subject of insurance is loss because of a defect in a real estate title.

Sections 178 to 191, inclusive, of the General Code have been repealed since the rendition of the above opinion (114 O. L., Am. S. B. 24) and in their stead there has been enacted a new "Foreign Corporation Act" Sections 8625-1 to 8625-33 both inclusive of the General Code. In such act certain corporations are exempted from the effect of its provisions. Section 8625-3, General Code, which is a part of said act, reads as follows:

"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."

It is to be observed that this section specifically exempts "title guarantee and trust companies" from the provisions of said act. Therefore no provision for or right to do business in Ohio may be found in the "Foreign Corporation Act."

There are no provisions for the qualification of corporations engaging in interstate commerce to do business but they are regulated exclusively by federal laws.

Section 710-17 and Sections 710-150 to 154, both inclusive, of the General Code, provide the method of qualification of trust companies to do business in the state. Section 9643 and Sections 691 to 695 both inclusive, of the General Code, provide the method for the qualification of building and loan companies to do business in the state. Sections 645 to 650, both inclusive, Sections 5442, 5443 and 9959 et seq. of the General Code, provide the methods for the qualifications of the different types of insurance companies to do business within the state. In short, the legislature has provided regulations for the qualification of every type of corporation except title guarantee and trust companies. The view does not seem unreasonable that if the legislature had intended to permit foreign title insurance companies to qualify to do business in this state it would have similarly made provisions for their qualification. Further weight is added to this argument by the language of Sections 9850 et seq. of the General Code quoted at length in the opinion which you ask me to review. Thus, in Section 9853, General Code, it is provided that the business of such corporation shall be limited to one county in this state which shall be designated in the application for a charter, and a foreign corporation would make no application to the state for a charter. In short, the State of Ohio has extremely rigid laws applicable to domestic title guarantee and trust companies and in them there is no inference that the intent of the legislature is that they shall apply to foreign corporations of such type or govern their operation. The State of Ohio has adopted laws regulating each type of foreign corporation engaged in a business less hazardous to the public welfare.

No change having been made by the legislature as to the policy of the state since the rendition of said opinion by my predecessor except by the enactment of the "Foreign Corporation Act" above referred to, which change has not altered the reasoning expressed in said opinion, I am of the opinion that it should be affirmed.

While there are no judicial opinions in Ohio decisive of the question at hand, it must be borne in mind that the Attorney General is officially the legal advisor to the legislators and it might well be the fact that the legislature had in mind the opinion of my predecessor when it enacted the present "Foreign Corporation Act" and specifically excepted the title guarantee and trust provisions of such act.

Answering specifically your inquiry it is my opinion that:

A foreign corporation can not legally qualify under the laws of this state for the purpose of engaging in the business of guaranteeing title to real property. (Opinions of the Attorney General for 1928, page 2885, approved and followed.)

Respectfully,

GILBERT BETTMAN,

Attorney General.