

will you please draw up a form bond to be used in the Division of Securities?"

Paragraph (d) of section 6373-3, so far as applicable reads as follows:

"Every such applicant shall execute and file a bond to the state of Ohio in such sum in no case to be less than ten thousand dollars and with such surety as the commissioner requires, and shall also execute and file a bond to the State of Ohio in such sum as the commissioner may require, but not to exceed twenty-five hundred dollars with such surety as the commissioner requires, for each agent named in such application or in any supplemental application made thereto."

In view of the strict interpretation given to the provisions of law relating to the obligations of sureties any statute requiring the giving of a bond should be followed strictly and no action should be taken which would give the surety an opportunity to contest his obligation on the ground that the statute had not been strictly complied with.

The statute specifically requires that each applicant shall file a bond for *each agent* named in the application or in any supplemental application. It is evident from the terms of this statute that the General Assembly contemplated that the bond for each agent should be a matter relating to him individually.

You are therefore advised that you are not authorized to accept a blanket bond for a definite number of agents, but that each applicant must furnish a separate bond for each individual agent.

Respectfully,
C. C. CRABBE,
Attorney General.

2950.

CORPORATIONS—FRANCHISE TAX—HOUSE BILL NO. 338 (111 O. L. 471) CONSTRUED

SYLLABUS:

1. *In making the finding as to the fair value of stock under House Bill 338 (111 O. L., 471), the commission is required to make such determination as of the beginning of the current annual accounting period of such corporation.*

2. *In determining the fair value of the stock under said act, the commission is not limited to the value thereof as reported to the federal government in its return made pursuant to section 700 of the federal revenue act of 1924, but it must make its determination of the fair value of such capital stock from such facts as may rightfully come before it, giving due consideration to the report of the corporation to the commission made pursuant to section 3 of said act.*

COLUMBUS, OHIO, November 20, 1925.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your recent communication is as follows:

"Section 4 of House Bill No. 338, known as the Dempsey act, requires this commission on the first Monday in September to determine the amount

of the fair value on an asset basis of the capital stock of domestic and foreign corporations.

"Query 1: In making the finding as to the fair value of the stock, is the commission required to determine it as of the beginning of the current annual accounting period of the corporation, or as of the date of filing its last annual report, under section 700 of the Federal Revenue Act of 1924?"

"Query 2: In determining the fair value of the stock, is the commission limited to the fair value as reported to the federal government in the return made in the year 1924, or may the determination of the commission as to such value be made independent of the amount of the fair value as returned to the federal government?"

Section 1 of House Bill 338, passed by the General Assembly, notwithstanding the objections of the governor, April 17, 1925, therefore effective July 16, 1925, requires corporations, with certain exceptions designated in section 10 thereof, to file within thirty days after the taking effect of said act, and annually thereafter during the month of April, a report in writing with the tax commission, in such form as it may prescribe. The act applies alike to corporations of this state for profit and to foreign corporations for profit, doing business in this state, or owning and using a part or all of its capital or property in this state, or having complied with section 163, General Code, and having been authorized by the secretary of state to transact business in this state.

Section 3 of the act provides:

"Such report shall include statements of the following facts as of the date of the beginning of the current annual accounting period of such corporation:

"1. The name of the corporation;

"2. The name of the state or country under the laws of which it is incorporated;

"3. The location of its principal office and, in the case of a foreign corporation, the location of its principal place of business in this state and the name and address of the officer or agent of the corporation in charge of the business in this state;

"4. The names of the president, secretary treasurer, with the post office address of each;

"5. The nature and kind of business in which such corporation is engaged;

"6. In the case of a corporation owning property within and without the state of Ohio, the location and value of the property owned and used by the corporation, both within and without the state, given separately;

"7. In the case of a corporation doing business without the state of Ohio, the total amount of business done and the amount of business done within the state by said corporation, during its preceding annual accounting period, given separately.

"8. A statement of the amount of the fair value of the capital stock of the company on an asset basis as shown by the taxpayer in its latest report to the commissioner of internal revenue of the United States under the provisions of section 700 of the revenue act of 1924, or in the event that for any reason a corporation has not filed any such report, in lieu of the statement above specified, such corporation shall file with the tax commission a statement of the amount of the fair value of its capital stock on an asset basis as of the 31st day of March next preceding the time of filing the report on the

same basis required by the commissioner of internal revenue of the United States under the provisions of the revenue act of 1924 above specified;

"9. A statement of the amount of the tax last paid to the United States under the provisions of section 700 of the revenue act of 1924;

"10. All other information necessary to the proper administration of this act."

Section 4 provides:

"Upon the filing of the report provided for in the last preceding sections, the tax commission, if it shall find such report to be correct, shall, on the first Monday in September, determine the amount of the fair value on an asset basis of the capital stock of every domestic corporation, required to file a report under section 1 of this act; and the appropriate amount of the fair value on an asset basis of the capital stock of every foreign corporation, required to file a report under section 1 of this act, represented by the sum of all the property owned or used and business done by it, located or transacted within this state. On the first Monday in October the tax commission shall certify to the auditor of state the amount so determined by it for each such corporation."

Section 5 of the act requires the auditor of state, on or before October 15, to charge for collection from each such corporation a fee of one-twelfth of one per cent upon such amount so certified, etc. It then provides:

"Such fee shall be charged for the privilege of exercising its franchises and doing business within the state in the calendar year in which the tax is payable."

Certain sections are repealed by the act, but section 9 specifically provides that certain unrepealed sections "shall be deemed to refer and have application to this act and the appropriate sections thereof." Among the sections so referred to is section 5517, which provides:

"Any bank, public utility or corporation may be heard by the commission upon the question as to the correctness of any determination, finding or order of the commission after the same has been made. * * * The commission, upon such application, may make such correction in its determination, finding or order, as it may deem proper, and its decision in the matter shall be final."

Section 700 of the Federal Internal Revenue Act, passed June 2, 1924, provides for a capital stock tax and is in part as follows:

"(a) On and after July 1, 1924, in lieu of the tax imposed by section 1000 of the Revenue Act of 1921—

"(1) Every domestic corporation shall pay annually a special excise tax with respect to carrying on or doing business, equivalent to \$1 for each \$1,000 of so much of the fair average value of its capital stock for the preceding year ending June 30 as is in excess of \$5,000. In estimating the value of capital stock the surplus and undivided profits shall be included;

"(2) Every foreign corporation shall pay annually a special excise tax with respect to carrying on or doing business in the United States, equiva-

lent to \$1 for each \$1,000 of the average amount of capital employed in the transaction of its business in the United States during the preceding year ending June 30th."

* * * * *

Section 3 answers the first inquiry. The report must include the statements of all facts required "as of the date of the beginning of the current annual accounting period of such corporation."

Section 4 provides:

"Upon the filing of the report provided for in the last preceding sections, the tax commission, if it shall find such report to be correct, shall, on the first Monday in September, determine," etc.

There appears no other provision having application to the date as of which the determination shall be made. However, by implication section 3 would require the determination to be as of the date of the beginning of the current annual accounting period. If the construction were otherwise, the data required to be given by section 3 would not be accurate. Section 4 is not inconsistent with this conclusion and appears to provide the date upon which the determination shall be made.

We see nothing in the act which even suggests that the determination is to be made as of the date of filing by the corporation of its last annual report of the federal government under section 700 of the Federal Revenue Act of 1924.

We further find no justification for any claim that the statement required by paragraph 8 of section 3 is conclusive upon the commission, but, on the contrary, the act merely makes the requirement for the purpose of aiding the commission in its determination of the fair value of the capital stock.

This intention is found in the act because, by the specific terms of section 3, the report must *include* the matter referred to in paragraphs 8 and 9, and the information required under paragraphs 8 and 9 thereof is merely a part of the information required and is in the nature of a check upon the corporations so reporting and gives to such corporations an opportunity of estimating the fair value of the capital stock thereof. Further, section 1 requires the report to be in such form "as the commission may prescribe," and paragraph 10 of section 3 requires the report to *include* statements of "all other information necessary to the proper administration of this act," thereby giving to the tax commission some discretion in determining what information it may need, in addition to that specified in paragraphs 1 to 9, inclusive of section 3, for the proper administration of its duties. This provision is entirely inconsistent with any claim that the commission is precluded by the report to the federal government and indicates that the judgment of the commission is to be exercised independently of what the statement may contain with reference to the report under section 700 of the Federal Revenue Act of 1924. Again, section 4 specifically requires the commission to determine the fair value of the stock and contains the significant clause reading as follows: "If it shall find such report to be correct." The report referred to is the report required by the act, not that required by the federal government. This implies that if the report required by the act is not found to be correct, the commission shall make its determination independent of the report.

Section 5517 is inconsistent with any such claim. It gives the right to the corporation to a hearing before the commission gives to the commission the right upon such application to make correction in its determination, and further provides that the commission's decision in the matter shall be final. If it had been the intention of the legislature to preclude the tax commission by the report of the corporation to the federal government, it certainly would not, as to corporations so reporting, have

provided in section 9 of the act that section 5517, General Code, should be deemed applicable.

In further consideration of reasons why the tax commission is, under the act, required to exercise its independent judgment and is not bound by the report made to the federal government, section 5461, as amended by the Dempsey bill, may be considered. The section provides in part as follows (111 O. L., 473):

"When any public utility or corporation fails to make any report to the tax commission required by law, or makes such report and fails to report or report (s) erroneously any information *essential to the determination* of any amount, value, proportion or other fact to be determined by the tax commission, pursuant to law, which is necessary for the fixing of any fee, tax or assessment, the tax commission shall proceed to determine such amount, value, proportion or other fact as nearly as practicable and shall certify the same as required by law," * * *

This section specifically gives to the commission the right to exercise its own judgment when the corporation either fails to report or erroneously reports the information which is "essential to the determination" of the matter. It is necessarily inconsistent with any claim that the commission is precluded from any determination other than the report required to be made to the federal government.

The fact that section 3 omits to require the inclusion in the statement to the commission of the liabilities of the corporation is not, in our judgment, any indication on the part of the legislature of an intent to preclude the commission from any investigation by the report to the federal government. It may well be said that the intent of the legislature was to leave the requirement for such information to the determination of the commission under paragraph 10 of section 3. At any rate, if that omission was due to an oversight of the legislators, its omission may be very properly supplied by the commission under the authority conferred by said paragraph.

We are therefore of the opinion:

First: In making the finding as to the fair value of stock under house bill 338 (111 O. L., 471), the commission is required to make such determination as of the beginning of the current annual accounting period of such corporation.

Second: In determining the fair value of the stock under said act, the commission is not limited to the value thereof as reported to the federal government in its return made pursuant to section 700 of the Federal Revenue Act of 1924, but it must make its determination of the fair value of such capital stock from such facts as may rightfully come before it giving due consideration to the report of the corporation to the commission made pursuant to section 3 of said act.

Respectfully,

C. C. CRABBE,
Attorney General.