in the excerpt from Opinion No. 475, infra, constitutionally impose such conditions as it chooses upon the renewal of the privilege just as it may upon the original grant of the privilege.

The right of the state to impose conditions upon the admission of foreign corporations to do business therein was considered in Opinion No. 475 of this department, rendered on May 10, 1927. It is sufficient to set forth from that opinion the following:

> "Subject to the qualifications that a state may not exclude from its limits a foreign corporation engaged solely in interstate or foreign commerce, or a foreign corporation which is an agency or instrumentality in the employment of the government of the United States and may not require as a condition of admission to do business in the state that a foreign corporation surrender any rights secured to it by the Constitution of the United States, a state may impose such conditions as it may desire upon the admission of a foreign corporation to do business in the state, without regard as to whether or not discrimination is created as among the foreign corporations themselves or as between foreign corporations and domestic corporations. The equal protection clause of the Constitution of the United States being limited to persons within the jurisdiction of the state, does not apply to a foreign corporation which has not yet been admitted to do business in the state."

Since, as I have before stated, there is no difference in principle between a new corporation seeking the right to do business and one which has had the right, but through its own failure to obey the law has forfeited that right, I have no difficulty in reaching the conclusion that the amount of the penalty imposed and the method of its computation rests solely within the discretion of the legislature. It will be observed that the clause under consideration expressly provides for an "additional penalty", and prescribes a method for determining the amount thereof, within the minimum and maximum limits of ten and one hundred dollars. In the present instance the additional penalty of ten cents per share is very specifically stated to be upon the authorized capital stock of the company and I see no warrant for concluding that the legislature did not mean what it has specifically said.

I am therefore of the opinion that the additional penalty provided by Section 5511 of the General Code of Ohio, to be paid for the privilege of reinstatement by a foreign corporation, whose certificate of authority to do business in this state has been canceled by the Secretary of State, is ten cents for each share of its authorized capital stock, such penalty not to exceed one hundred dollars nor be less than ten dollars in any case.

Respectfully,
EDWARD C. TURNER,
Attorney General.

662.

ARSON—PERSON WHO PLEADS GUILTY MAY NOT BE PLACED ON PROBATION BY THE COURT.

SYLLABUS:

A person who pleads guilty to or is convicted of arson, may not, because of the

provisions of Section 13708, *General Code, be placed on probation by the court or magistrate.*

COLUMBUS, OHIO, June 24, 1927.

HON. LOUIS F. MILLER, *State Fire Marshal, Columbus, Ohio.*

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

> "We shall appreciate it if you will inform us, by way of an opinion, whether or not a person who pleads guilty to or is convicted of arson may be put on probation by the court or magistrate."

By the express terms of Section 13706, General Code, *unless otherwise provided by law,* where a defendant has pleaded guilty to or been found guilty of a crime and it appears to the satisfaction of the court or magistrate that his character and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct and the public good does not demand or require that he be immediately sentenced, such court or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law. This section reads:

> "In prosecutions for crime, except as mentioned in Section 6212-17 of the General Code, and as hereinafter provided where the defendant has pleaded or been found guilty and it appears to the satisfaction of the court or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and that the public good does not demand or require that he shall be immediately sentenced, such court or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such court or magistrate shall determine."

The above statute was enacted on May 9, 1908 as "An act—To provide for probation for persons convicted of felonies and misdemeanors." (99 v. 339) Section 2 of that act is now Section 13708, General Code, which reads:

> "No person convicted of murder, arson, burglary of an inhabited dwelling house, incest, sodomy, rape without consent, assault with intent to rape, or adminstering poison shall have the benefit of probation."

This section has never been changed and the provisions are the same now as they were when enacted.

Section 13706, General Code, however, has undergone some amendments and was last amended by the legislature on April 17, 1925 (111 v. 428) and now reads as above quoted. This amendment of April 17, 1925, changed the language of the section so as to provide "any prosecutions for crime, *except as mentioned in Section* 6212-17 *of the General Code,* and, as hereinafter provided, where the defendant has pleaded or been found guilty", etc. Section 6212-17 is the section that provides for penalities for violation of the liquor law.

I appreciate that it might be contended that since Section 13706, General Code, specifically mentioned Section 6212-17 of the General Code, as specifying the crimes not subject to probation, and that said section did not include any of the excepted

crimes enumerated in Section 13708, General Code, by implication, the crimes excepted therein are no longer crimes ineligible for probation, on the theory that the specific mentioning in a later statute of but one crime as not subject to probation, included all the others as subject to probation. The fallacy of such a contention is manifest, however, when proper consideration is given to the words "except * * * as hereinafter provided", which, of course, referred to Sections 13707 and 13708, General Code, (orginally a part of the same act) before the amendment of 1925, and must, therefore, be said to refer to said sections after such amendment.

In the case of *Madjorous* vs. *State of Ohio,* 113 O. S. 427, Section 13706, supra, was attacked as being unconstitutional on the grounds that the enactment of such a section was an encroachment of the legislature upon the judiciary. In the above case, in the opinion by Judge Marshall, at page 432, it was said:

> "The Legislature of Ohio has made a limited provision in such matters, which provision will be found in Section 13706 to 13715, inclusive, General Code. In those sections certain provision is made for placing prisoners upon probation, and certain exceptions are made thereto in the same chapter. Section 6212-17, General Code, is merely an additional exception to the general provisions of Section 13706, General Code. The legislature has the power to fix the jurisdiction of the trial courts. It has the power to define crimes and misdemeanors. It has the power to provide the procedure, and the unlimited power to fix conditions and limitations upon definitions of crimes and upon provisions for practice and procedure. In short, it has the power to give and the power to take away. It has given power in the matter of probation of prisoners in Section 13706, and it has made exceptions thereto in Sections 13707, 13708 and 6212-17."

From the case, supra, it is clear that the supreme court considered specifically the crimes mentioned in Section 13708, General Code, as not now subject to probation.

Specifically answering your question, for the reasons and upon the authority above stated, I am of the opinion that a person who pleads guilty to or is convicted of arson, shall not have the benefit of probation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

663.

COUNTY COMMISSIONERS—CONTRACT WITH COUNTY SHERIFF FOR FEEDING PRISONERS.

SYLLABUS:

A board of county commissioners and a county sheriff are without power to enter into a contract, in which, for the consideration of sixty-five cents per day per prisoner and twenty cents per week per prisoner, the sheriff agrees to board county prisoners and launder such prisoners' clothes; and such a contract is void ab initio,