

hundred within one year and one hundred within two years; or three hundred in cash, and one hundred within one year and two hundred within two years, or any other terms may be agreed upon so long as the requirements of the statute are complied with, namely, not *less* than one-third must be paid in cash, while neither of the two remaining instalments, to be respectively paid within one and two years, may be *more* than one-third of the purchase price.

For the reasons above stated it is my opinion that:

1. Under the provisions of Section 7201, General Code, township trustees may purchase a tractor or other equipment for use in constructing, maintaining and repairing roads upon the terms prescribed in such section, namely, not *less* than one-third of the purchase price in cash, not *more* than one-third at any time within one year and not *more* than one-third at any time within two years from the date of purchase.

2. By the express terms of Section 3373, General Code, all purchases of machinery by township trustees for use in constructing, maintaining and repairing roads must, where the amount involves five hundred dollars, be made from the lowest responsible bidder after advertisement, as prescribed by such section.

3. By the express terms of Section 7201, General Code, the provisions of Section 4660, General Code, apply only to such portion of the purchase price of machinery, tools, trucks or equipment, maintaining and repairing roads, as is to be paid in cash.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

661.

CORPORATION—REINSTATEMENT OF FOREIGN CORPORATION—  
PENALTY.

SYLLABUS:

*The additional penalty provided by Section 5511, General Code, 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 to be less than ten dollars in any case.*

COLUMBUS, OHIO, June 24, 1927.

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

DEAR SIR:—I acknowledge receipt of your communication as follows:

"The J. L. Company qualified January 12, 1923, under Sections 178 and 183 G. C., for the purpose of doing business in Ohio. The filing shows a total capital stock of \$500,000 divided into 5,000 shares of \$100.00 each. The proportion in Ohio as shown by the filing is \$25,870.00, or five percent.

The qualifying certificates were canceled upon certificate of the Tax Commission under date of February 15, 1927.

The department is now in receipt of a communication that the company desired to reinstate the certificate of authority to do business and desires to be advised as to fees.

In connection with the above your attention is directed to Section 5511 G. C., as appears in Am. Sub. S. B. 22 of the last legislature wherein it will be noted that there is an additional penalty to be charged by the Secretary of State of ten cents for each share of the company's authorized capital stock. In fixing the reinstatement fee is this language to be taken as meaning the total authorized capital stock of the company or on the other hand of the proportion of the company's authorized capital stock represented by property and business in Ohio? It will be noted that the reinstatement fee of the subject company is quite different under the two possible constructions."

Section 5511 of the General Code, as enacted in Amended Substitute Senate Bill No. 22 by the last legislature, reads as follows:

"Any corporation whose articles of incorporation or certificate of authority, to do business in this state, has been cancelled by the Secretary of State, as provided by law for failure to make report or return or to pay any tax or fee, upon the filing, with the Secretary of State, of the certificate from the Tax Commission that it has complied with all the requirements of law as to reports and paid all taxes, fees or penalties due from it for each and every year of its delinquency, and upon the payment to the Secretary of State of an additional penalty of 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, shall be entitled again to exercise its rights, privileges and franchises in this state, and the Secretary of State shall cancel the entry of cancellation so made by him and shall issue his certificate entitling such corporation to exercise its rights, privileges and franchises; provided, however, that if such application for reinstatement be not made within two years from the date of the cancellation of its articles of incorporation, and it appears that articles of incorporation shall have been issued to a corporation of the same or similar name, the applicant for reinstatement shall be required by the Secretary of State as a condition pre-requisite to such reinstatement, to amend its charter by changing its name. For the purpose of computing the penalty hereinabove provided for, and for no other purpose, all shares of capital stock without nominal or par value shall be taken to be the par value of one hundred dollars each."

Your question is whether the additional penalty, the payment of which is therein provided as a condition precedent to the reinstatement of a corporation whose certificate of authority has been canceled, should be ten cents a share upon all the authorized capital stock or upon the proportion of the stock representing property owned and business done in Ohio.

The wording of the above section is plain and shows no indication whatsoever to give consideration to any proportion. The doubt in your mind is probably due to the fact that, in the determination of the annual franchise fee, the Tax Commission shall determine the proportionate value of the issued and outstanding shares of stock of each corporation and the tax is assessed on this portion alone.

By reason of the failure of the company in the present instance to pay the annual franchise fee, its certificate to do business in Ohio was duly canceled upon the certificate of the Tax Commission and, from that time on, the corporation had no legal right to do business in this state. By failing to comply with the law, its status became the same as that of any foreign corporation seeking to do business in Ohio for the first time. The state may, subject to the three limitations set forth

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*