

The license by the state to a foreign corporation to do business in a state does not give that corporation the right to property vested in the state for the benefit of its own people.

I am, therefore, of the opinion that a foreign corporation authorized to engage in the business of catching fish in the State of Ohio must pay a non-resident's license fee, as provided in Section 1423 of the General Code of Ohio.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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304.

HOLIDAY—SATURDAY AFTERNOON—PUBLIC OFFICES CAN REMAIN OPEN—BUSINESS TRANSACTED LEGAL.

*SYLLABUS:*

*Section 5978, General Code, makes Saturday afternoon one-half legal holidays for all purposes and contemplates that public offices shall be closed on said afternoons. However, there is no inhibition against keeping such offices open for the purpose of transacting public business and any such business so transacted will not be invalidated by reason of the fact that it was consummated on Saturday afternoon.*

COLUMBUS, OHIO, April 13, 1929.

HON. C. G. L. YEARICK, *Prosecuting Attorney, 1003 Trust Building, Newark, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, which reads:

“Sec. 5978, of the General Code of Ohio, provides that every Saturday afternoon of each year shall be a one-half legal holiday *for all purposes*, beginning at twelve o'clock noon and ending at twelve o'clock midnight. It is also stated that nothing in this section or any other, or any decision of any court, shall in any manner affect the validity of, or render void or voidable, any check, bill of exchange, order, promissory note, due bill, mortgage or other writing obligatory made, signed, negotiated, transferred, assigned or paid by any person, persons, corporation or bank upon said half holiday, *or any other transaction had thereon.*”

The majority of the offices in the Licking County Court House at Newark are open for the transaction of official business on Saturday afternoon. The County Recorder closes his office at noon Saturday, for which he claims to have full warrant under Sec. 5978.

This situation makes it possible for a creditor to obtain a judgment lien against his debtor's property on a Saturday afternoon, or to commence an action or proceeding in the Common Pleas Court or in the Probate Court of this county, which has concurrent jurisdiction with our Common Pleas Court in divorce, alimony, partition and foreclosure of mortgages. But a creditor desiring to file a chattel mortgage or a mortgage on real estate, or a mechanic's lien, would find it impossible to do so on Saturday afternoon. Members of the local bar are complaining of the advantage afforded one class of creditors over another by reason of the situation here existing.

It is the further claim of each county officer that he has the right to regulate his own office hours, and those who are open Saturday afternoon

close their offices each noonday for one and one-half hours, whereas, the recorder keeps his office open during that period.

I respectfully ask your opinion as to the legality of keeping the Licking County offices, other than that of recorder, open for the transaction of official business on Saturday afternoons."

Section 5978, General Code, to which you refer, provides :

"Every Saturday afternoon of each year shall be a one-half legal holiday for all purposes, beginning at twelve o'clock noon and ending at twelve o'clock midnight. Nothing, however, in this section or any other, or any decision of any court, shall in any manner affect the validity of or render void or voidable any check, bill of exchange, order, promissory note, due bill, mortgage or other writing obligatory made, signed, negotiated, transferred, assigned or paid by any person, persons, corporation or bank upon said half holiday, or any other transaction had thereon."

Considerable confusion has arisen in connection with the provisions of the statutes as to holidays, by reason of the fact that certain days are regarded as holidays "for all purposes" and others are regarded as holidays for specific purposes. That is to say, Section 8301, of the General Code, designates a number of days, mentioned therein, which are to be regarded as legal holidays for the purposes of the negotiable instruments law, while other days, such as Labor Day and Saturday afternoon, are regarded as holidays for all purposes.

As is stated in my opinion, No. 84, issued under date of February 11, 1929, to Hon. Myers Y. Cooper, Governor, a copy of which is enclosed herewith for your information, "the legislation on the subject of holidays generally is in need of clarification." However, it would seem to be clear that, generally speaking, a holiday which is for all purposes contemplates the cessation of business activities upon said day.

In an opinion of the Attorney General, found in Opinions of the Attorney General for the year 1915, p. 567, it was held that district superintendents of schools cannot require teachers of their district to attend meetings, under Section 7706-1 of the General Code, on Saturday afternoons. After quoting Section 5978, the then Attorney General said :

"I do not think a board of education can ignore the plain provisions of this statute."

In an opinion of the Attorney General, found in Opinions of the Attorney General, for the year 1918, in response to the question as to whether or not county officials could properly close the county offices on Saturday afternoon, the then Attorney General said :

"County offices may close on Saturday afternoon."

Also, the word holiday has been defined :

"A 'holiday' is a day on which ordinary occupations are suspended. *United Cigar Stores Co. vs. Worth-Gyles Grain Co.*, 212 Ill. App. 26."

—Words and Phrases, 3rd Series, Vol. IV, p. 1.

"The word 'holiday' means, first, a consecrated day, a general festival; and, second, a day on which the ordinary occupations are suspended, a day

of exemption or cessation from work, a day of festivity, recreation or amusement. *State vs. Shelton*, 77 N. E. 1052-1054, 38 Ind. App. 80."

—Words and Phrases, 2nd Series, Vol. II, p. 900.

It, therefore, seems that the spirit of Section 5978, General Code, supra, contemplates the closing of public offices upon Saturday afternoon. However, notwithstanding that the law contemplates the closing of such offices, there seems to be no inhibition against keeping them open in the event the official in charge thereof sees fit to do so.

Section 5977 of the General Code provides :

"The first Monday in September of each year shall be known as 'Labor Day,' and, for all purposes, shall be considered as the first day of the week."

In construing the section last quoted in the case of *Grocery Co. vs. Armstrong*, 8 O. C. C. 489, the court held that a judgment by confession before a justice of the peace on Labor Day is absolutely void and such judgment may be attacked collaterally. Said opinion was affirmed without report by the Supreme Court of Ohio in 53 O. S. 657 .

However, in the case of *State vs. Thomas*, 61 O. S. 444, it was held that a term of the Common Pleas Court may begin on Labor Day and an indictment found by a grand jury which is impaneled and sworn that day is not invalid. This case was cited, apparently with approval, by the Supreme Court of Ohio in the case of *Norman vs. State*, 109 O. S. 213. While the facts in that case involved the question as to the legality of one being tried on Columbus Day, October 12, and therefore distinguishable from the Thomas case, the court cites the latter as authority. The following is quoted from the body of the court's opinion in said case of *Norman vs. State*:

"It has generally been held that, in the absence of a statute containing a mandatory provision forbidding the judges of courts to hear and determine matters on a legal holiday, a judicial proceeding upon such day is not void. 10 L. R. A. (N. S.), note, and cases cited."

Based upon the foregoing citations and discussions, it is my opinion that Section 5978 of the General Code, makes Saturday afternoons one-half legal holidays for all purposes and contemplates that public offices shall be closed on said afternoons. However, there is no inhibition against keeping such offices open for the purpose of transacting public business and any such business so transacted will not be invalidated by reason of the fact that it was consummated on Saturday afternoon.

Respectfully,

GILBERT BETTMAN,

Attorney General.

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305.

RODMEN—CLASSIFIED AS ASSISTANTS TO COUNTY SURVEYOR—ENTITLED TO EXPENSES UNDER SECTION 2786, GENERAL CODE.

SYLLABUS:

*Rodmen come under the classification of assistants and their reasonable and necessary expenses incurred in the performance of their official duties should be allowed under Section 2786, General Code of Ohio.*