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CORPORATION—ORGANIZED UNDER LAWS OF ANOTHER STATE—PURPOSE, TO HOLD, SELL AND LEASE REAL ESTATE—NOT TRANSACTING BUSINESS WITHIN MEANING OF SECTION 8625-4 G. C. IN OHIO BY MERELY OWNING REAL ESTATE IN OHIO OR BY INSTITUTION AND PROSECUTION OF A SUIT IN STATE OF OHIO.

SYLLABUS:

A corporation, organized under the laws of another state for the purpose of holding, selling, improving and leasing real estate, is not transacting business within the meaning of Section 8625-4, General Code, in the state of Ohio by merely owning real estate located in Ohio or by the institution and prosecution of a suit in the state of Ohio.

Columbus, Ohio, August 16, 1948

Hon. Edward J. Hummel, Secretary of State  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“An application for a license was filed in this office April 19, 1948 by P. R. Corporation, a corporation organized under the laws of the state of Maryland. The application recited the approximate date which the corporation began transacting business in Ohio was 1933.

“The license was issued and immediately thereafter this office assessed a penalty against this corporation covering the period it allegedly transacted business in Ohio without complying with the Foreign Corporation Act pursuant to Section 8625-25 of the General Code of Ohio in the amount of \$92,500.00.

“The question raised is ‘WHAT CONSTITUTES DOING BUSINESS’ within the meaning of the Ohio Statute. The facts are as follows:

“The P. R. Corporation was incorporated under the laws of the state of Maryland for the purpose of purchasing, holding, selling, improving and leasing real estate. This company acquired title to the East half of Inlot No. 30 in the city of Lima, Allen County, Ohio by deed from S. J. W., dated February 4, 1933 which is recorded in the Allen County, Ohio deed records, Volume 221, page 144. It is alleged the deed was executed, acknowledged and delivered to The P. R. Corporation in New York City. Prior to the execution of this deed, Mr. W. had leased these premises for a period of Ninety-nine (99) years to a Mr. R. by Lease dated May 17, 1918 and recorded in the records of the county recorder of Allen County, Ohio. Mr. R. then sublet the premises to The W. Company under a lease for twenty-five years, dated September 19, 1918 which is also recorded in the records of the county recorder of Allen County, Ohio.

“It is contended by The P. R. Corporation that no business was transacted in Ohio from February 4, 1933 to the present date by reason of the fact that the deed to the property was executed, acknowledged and delivered to New York City and that the rents are paid by The W. Company to The P. R. Corporation in New York City; that the W. Company pays all the taxes, the insurance, the repairs and upkeep and there is nothing whatsoever for The P. R. Corporation to do in this matter except collect the rents in New York City.

“The application for a license was filed by The P. R. Corporation due to the fact that the National Bank, as Trustee under the will of W. L. R., desired to distribute all of the assets of the estate to the heirs and The P. R. Corporation, in order to protect its rental, decided to and did file an injunction in the Court of Common Pleas, Allen County, Ohio, requesting said Trustee to hold sufficient collateral in the estate to protect the interests of The P. R. Corporation in event of a failure of the rentals under the Ninety-nine year lease.

“The question involved in which your opinion is requested is:

“‘Is a corporation which has been organized under the laws of another state for the purpose of purchasing, holding, selling,

improving and leasing real estate, and subsequently acquires title to real estate in Ohio, under these facts as stated herein, doing business in Ohio within the meaning of the Ohio Foreign Corporation Act? ”

It is to be noted from the statement of facts set forth in your letter that The P. R. Corporation is a Maryland corporation organized for the purpose of holding, selling, improving and leasing real estate and that such corporation, pursuant to the purpose for which it was organized, received in the year 1933 title in the state of New York to real estate located in Allen County, Ohio, and that the deed for such property was recorded in Allen County (which I understand was done by mail, although that fact does not appear in your request); that at the time the real estate was acquired it was subject to a ninety-nine year lease, which lease also had been sublet for a term of twenty-five years; that under said lease the rents are payable to The P. R. Corporation in New York City and that the taxes, insurance, repairs and upkeep are paid and maintained by the lessee; also that a suit for an injunction has been filed in the Court of Common Pleas of Allen County, Ohio by The P. R. Corporation, for the purposes as set forth in your request. The question is as to whether, under the above facts, The P. R. Corporation is transacting business in the state of Ohio within the meaning of Section 8625-4, General Code.

Section 8625-4, General Code, provides in part as follows:

“No foreign corporation not excepted from the provisions of this act shall transact business in this state unless it shall hold an unexpired and uncanceled license so to do issued by the secretary of state. \* \* \*”

It is generally accepted that the institution and prosecution of a suit in a state does not in and of itself constitute the transaction of business in that state. 10 O. Jur., (Foreign Corporations) Section 929; 23 Am. Jur., (Foreign Corporations) Section 366; *W. T. Rawley Company v. Frank Graham*, 103 Pac. (2nd) 1076, 129 A.L.R. 596.

Is a foreign corporation, organized for the purpose of holding, selling, improving and leasing real estate, engaged in the transaction of business in Ohio by owning real estate located in Ohio? This precise question, under a former analogous statute, was before the Attorney General in 1917. See Opinions of the Attorney General for 1917, page 597, wherein the then Attorney General held:

“A foreign corporation whose only activity in this state is that of owning real property here, which it leases to others, is not required to comply with the provisions of sections 178 and 183 of the General Code.”

The facts set out in the request for that opinion were as follows :

“The Rubber Goods Manufacturing Company, under an agreement not made in this state, has purchased and acquired certain real estate and a manufacturing plant located therein formerly owned by the Mechanical Rubber Company, a New Jersey corporation, and the Sawyer Belting Company, a Massachusetts corporation, the deed being delivered outside of the state of Ohio. The Rubber Goods Manufacturing Company will not conduct any business on the premises, but proposes to grant a long term lease thereof to the Mechanical Rubber Company and the Sawyer Belting Company—the lease to be executed and delivered outside of this state, under which lease certain periodical rents are to be paid to the owner at its office in another state. The Mechanical Rubber Company and the Sawyer Belting Company, have each duly procured licenses to do business in the state of Ohio as foreign corporations.

“The Rubber Goods Manufacturing Company does not and will not maintain any office in this state nor have any representatives therein ; it will not manufacture, sell or deal in any products in this state, all of its officers and agents being non-residents. So far as Ohio is concerned, its sole function will be to hold title to the property above mentioned and to receive at its office the rent therefrom.

“The corporate power of The Rubber Goods Manufacturing Company to do the foregoing appears from the following clause in its certificate of incorporation, included among the objects for which the corporation was formed :

“To invest in, grant, bargain, sell, buy, rent, deal in, own, improve, lease or receive any and all kinds of property, real or personal, within or without the state of New Jersey, including the shares and evidences of indebtedness of other corporations as well as its own shares, and to deal with the same as a natural person might do, and in all ways not inconsistent with the law.’ ”

The then Attorney General, in reaching the conclusion above noted, had this to say :

“From the facts stated in the communication above referred to and quoted, it appears that with respect to this state the sole activity of The Rubber Goods Manufacturing Company consists of the owning of property situated here, the purchase and sale of

which was consummated outside of the state, which property it proposes to lease by an instrument to be executed and delivered likewise outside of the state of Ohio. Under this state of facts I am inclined to the view that the Rubber Goods Manufacturing Company is not required to comply with the provisions of sections 178 or 183, General Code.

“As before noted both of said sections by their terms are predicated upon the condition that the foreign corporation is transacting or doing business in this state, and it has been uniformly held that the ownership by a foreign corporation of property within the jurisdiction of a particular state cannot of itself constitute ‘doing business’ by the corporation therein.” (Thereafter follows a citation of authorities relied upon and a discussion of pertinent cases.)

I find myself in accord with the conclusion reached in that opinion and the reasoning found therein. This conclusion is also supported by an opinion found in Opinions of the Attorney General for 1932 at page 771, being Opinion No. 4423, where, in response to a request for an opinion as to whether a foreign corporation was transacting business in Ohio under the facts set out in paragraph 13 thereof which read as follows:

“13. The C. T. Company, a foreign corporation, is a holding company owning all of the shares of capital stock of the C. T. Company, an Ohio corporation, owns no other assets in Ohio and maintains no office here.”

the then Attorney General ruled that such acts did not constitute transacting business within the state of Ohio.

Our Supreme Court, in the case of Conrad et al. v. Rarey et al., 125 O. S. 326, decided a somewhat similar question, viz., that the holding of a trust deed to real estate located in Ohio by a foreign corporation and the acceptance of payment of the notes secured thereby at its office outside of Ohio did not constitute the transaction of business in this state.

I am therefore of the opinion that a corporation, organized under the laws of another state for the purpose of holding, selling, improving and leasing real estate, is not transacting business within the meaning of Section 8625-4, General Code, in the state of Ohio by merely owning real estate located in Ohio or by the institution and prosecution of a suit in the state of Ohio.

Respectfully,

HUGH S. JENKINS,

Attorney General.