In County Court of Wayne County v. Bridge Co., Inc., 46 Fed. Sup., 1 (1942), paragraphs 1, 2 and 3 of the headnotes read:

"1. The power of eminent domain is an attribute of sovereignty and within its own jurisdiction each state possesses such sovereign power.

"2. Each state holds all the property within its territorial limits free from the eminent domain of all other states, so that no state can take or authorize the taking of property located in another state.

"3. A state cannot own or acquire property in another state without the latter's consent."

In State of Georgia v. Chattanooga, 264 U. S., 472, the headnotes are in part as follows:

"1. Land acquired and held for railway purposes by one state within the borders of another with the latter's consent remains subject to the eminent domain of the state in which it lies and subject to be condemned by that state, or her authorized municipality, for a public street, in proceedings against the owner state, even though she has not consented to be sued. P. 479

"2. Acceptance by Georgia of permission given her to acquire railroad land in Tennessee, is inconsistent with an assertion of her own sovereign privileges in respect of such land, and amounts to consent that it may be condemned as may like property of others. P. 482"

In the course of the opinion in this case the court said:

"Land acquired by one state in another state is held subject to the laws of the latter and to all the incidents of private ownership. The proprietary right of the owning state does not restrict or modify the power of eminent domain of the state wherein the land is situated. See Burbank v. Fay, N. Y. 57, 62; United States v. Railroad Bridge Co., 6 McLean, 517, 533; United States v. Chicago, 7 How. 185, 194. Tennessee by giving Georgia permission to construct a line of railroad from the state boundary to Chattanooga did not surrender any of its territory or give up any of its governmental power over the right of way and other lands to be acquired by Georgia for railroad purposes. The sovereignty of Georgia was not extended into Tennessee. *Its enterprise in Tennessee is a private undertaking. It occupies the same position there as does a private corporation authorized to own and operate a railroad;* and, as to that property, it cannot claim sovereign privilege or immunity. Bank of United States v. Planter's Bank, 9 Wheat. 904, 907; Bank of Kentucky v. Wister, 2 Pet. 318,

323; Louisville C. & C. R. R. Co. v. Letson, 2 How. 497, 550; South Carolina v. United States, 199 U. S., 437, 463."
(Emphasis added.)

The role assumed by a sovereign state when it engages in purely business transactions is aptly described by Mr. Justice Sutherland in State v. Helvering, 292 U. S. 360 (369), in the following language:

"* * * The argument seems to be that the police power is elastic and capable of development and change to meet changing conditions. Nevertheless, the police power is and remains a governmental power, and applied to business activities is the power to regulate those activities, not to engage in carrying them on. Rippe v. Becker, 56 Minn., 100, 111, 112, 57 N. W. 331, 22 L. R. A. 857. If a state chooses to go into the business of buying and selling commodities, its right to do so may be conceded so far as the federal constitution is concerned; but the exercise of the right is not the performance of a governmental function, and must find its support in some authority apart from the police power. When a state enters the market place seeking customers it divests itself of its *quasi* sovereignity *pro tanto,* and takes on the character of a trader, so far, at least, as the taxing power of the federal government is concerned. * * *"

From all of the foregoing it becomes clear that a state merely by virtue of its ownership of land located in a sister state enjoys no privileges or immunities whatever by reason of its sovereignty within its own borders. This being so, it must follow that its corporate creatures, even though they be purely agencies designed to discharge purely public functions, can enjoy no greater privileges and immunities than their creator.

We may next consider whether the board is a corporation within the meaning of the Ohio laws or whether, because it is a department of a sister state having corporate powers, it could not be so classified. In Perkins v. Benguet Consolidated Mining Co., 155 Ohio St., 116, the court stated the test by which a corporation is recognized as follows:

"2. An organization, organized under the laws of another state or country, is a foreign corporation if it has the essential attributes of a corporation, within the meaning of that word as used in the Ohio statutes, even though it does not have all the attributes of an Ohio corporation.

"3. In order to be a corporation, an organization must be a legal unit under or be recognized as an entity by the law of the state or country in which it was organized."

In Section 25.17 Wisconsin statutes, it is provided that, "The 'state of Wisconsin Investment Board' shall be a body corporate * * *." Quite clearly the state of Wisconsin has, by this provision, created a "legal unit," and has "recognized as an entity" the agency with which we are here concerned, and even though the board may not possess all of the attributes of an Ohio corporation, I must conclude that it possesses "the essential attributes of a corporation, within the meaning of that word as used in the Ohio statutes."

In Section 8625-2, General Code, we find the following definitions:

> "When used in this act (G. C. Sections 8625-1 to 8625-33), the following words shall have the following meanings:
>
> " 'Domestic corporation' shall mean a corporation incorporated under the laws of this state;
>
> " 'Foreign corporation' shall mean a corporation incorporated under the laws of another state;
>
> " 'State' shall mean any state, territory, insular possession, or other political subdivision of the United States, including the District of Columbia, and any foreign country or nation whose political sovereignty is recognized by the United States, and any province, territory or other political subdivision of such foreign country or nation; * * *"

This definition of "foreign corporation" is quite broad in scope and it makes no distinction in the matter of classification of corporations as private, public, quasi-public, business or eleemosynary. Morever, it will be observed that the exemptions set out in this act make no reference to purely public corporations. Such exemptions are stated in Section 8625-3, General Code, as follows:

> "This act shall not apply to corporations engaged in this state solely in interstate commerce, including the installation, demonstration, or repair of machinery or equipment, sold by them in interstate commerce, by engineers or employees especially experienced as to such machinery or equipment, as part thereof, nor to banks, trust companies, building and loan associations, title guarantee and trust companies, bond investment companies, insurance companies, nor to public utility companies engaged in this state in interstate commerce."

Here it is appropriate to note the object of legislation imposing conditions on the admission of foreign corporations to carry on their affairs within a state other than that of domicile. In 23 American Jurisprudence, 203, Section 234, we find the following statement:

"* * * Such legislation affords protection to those with whom such corporation does business or to whom it incurs liabilities arising from its wrongful acts. It is intended to relieve, in a measure, the disadvantages of citizens dealing with foreign corporations. It has been said that the chief purpose of requirements imposed as conditions precedent to the right of foreign corporations to do business in the jurisdiction is to subject such corporation to inspection, so that their condition, standing, and solvency may be known; an incidental purpose may be to provide revenue. Many such statutes are designed to obviate the difficulty, under common law rules of bringing a foreign corporation within the jurisdiction of any court other than that of the incorporating state. The state may also wish to limit the number of such corporations or to subject their business to such control as would be in accordance with the policy governing domestic corporations of a similar character, even though the business itself is not unlawful according to the local law. Although the state's plenary power with respect to corporations is sufficient to justify such laws, many of them when rightfully made, are evidently mere police regulations, designed to protect the citizens of the state in which they are enacted from loss or imposition, and on this ground also their legality cannot be drawn in question."

By referring again to the provisions of Section 8625-3, supra, it will be noted that with the exception of certain corporations engaged in interstate commerce, all the exempted classes of corporations there listed are subject to registration and regulation under special statutes relating to each. The interstate commerce exemption is, of course, made to avoid a constitutional conflict. It will be seen, therefore, that there is no inconsistency between these exemptions and an interpretation of the statute which would include purely public corporations of a sister state.

There is, morever, as to such foreign public corporations, a proper and salutary objective to be attained by the imposition of a licensing or registration requirement on them as a condition of admission. Such registration would establish the jurisdiction of the Ohio courts in controversies which might arise between such corporations and Ohio residents, and would facilitate the service of summons on such corporations in local jurisdictions. That such controversies might well arise from the operations proposed to be undertaken in the instant case can scarcely be doubted. It would appear, therefore, that there is nothing in the inherent nature of the corporate organization nor its proposed business operations in the instant case which is inconsistent with the evident legislative purpose in setting up the registration requirements of foreign corporations generally. This being so, there

being no exemption provision applicable, and in view of the test as to corporate recognition stated in the Benquet case, supra, I am impelled to conclude that the State of Wisconsin Investment Board is a foreign corporation as defined in Section 8625-2, General Code. Accordingly, I perceive no reason why such Board could not lawfully be issued a license under the provisions of Section 8625-1, et seq., General Code.

A further question has been raised as to the cost by way of license fees, etc., of compliance with the foreign corporation act. This requires a determination of whether the board is to be deemed a corporation for profit or one not for profit.

Manifestly the object of the board's investment activities in Ohio will be to realize a pecuniary profit. Under the Wisconsin Laws, however, such profit will accrue to the benefit of the state rather than to any private person. This is true despite the fact that a portion of the funds to be invested by the board will have come into its custody by virtue of contributions made by the several beneficiaries of the pension systems concerned, for it appears that under the Wisconsin statutes the rights of such beneficiaries are fixed by law according to formulae which are affected, only indirectly if at all, by the earnings realized from the board's investments.

It is true that in State ex rel Russell v. Sweeney, 153 Ohio St., 66, the court held that where a profit accrued to members of so-called non-profit corporations, such profits being in the form of a saving of expense or obtaining a service of cost, the corporation concerned could not be regarded as one not for profit. However, in Cattle Club v. Glander, 152 Ohio St., 506, the court held:

> "The fact, that a corporation is organized and operated as one not for profit, does not mean that its enterprises may not be conducted for gain, profit or net income to the corporation as a legal entity apart from its members."

In the instant case I have no difficulty in concluding that all of the board's profit will accrue to "the corporation as a legal entity, apart from its members"; and that this is true despite the purely incidental benefit flowing to the beneficiaries of the state pension systems concerned by reason of the circumstance that profits from the board's investments will materially aid the state in maintaining an actuarily sound pension fund with a proportionate diminution of the need to use public funds raised by taxation for such purpose. It is my opinion, therefore, that the board must be regarded

as a corporation not for profit, and a license issued to it as such, under the provisions of Section 8625-27, General Code.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The State of Wisconsin Investment Board, being designated by Wisconsin statutes as "a body corporate," is thereby constituted a legal unit and recognized as an entity by the law of its creation, and possesses the essential attribute of a corporation within the meaning of such term as used in the Ohio foreign corporation act. Section 8625-1, et seq., General Code.

2. Where such corporation is engaged in the business of investing for a profit certain funds of the Wisconsin state retirement systems, which profit accrues to the benefit of such state systems without directly affecting the statutory formulae by which payments to the beneficiaries thereof are determined, such profit must be deemed to accrue to the corporation as a legal entity apart from its members, and the corporation must be regarded as a corporation not for profit.

3. A foreign corporation is transacting business in Ohio within the meaning of the Ohio foreign corporation act, Section 8625-1 et seq., General Code, when it purchases and holds for investment purposes real estate located in Ohio, when the transaction is in fulfillment of its corporate purposes and is a part of its ordinary business (Opinion No. 578, Opinions of Attorney General for 1949, p. 282, approved and followed; Opinion No. 3566, Opinions of Attorney General for 1948, p. 412, overruled).

Respectfully,

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Attorney General