

those classes of cases, in which final jurisdiction is specifically given to a justice of the peace, by Section 13423 or other sections of the General Code. By the terms of Section 13510, General Code, however, this rule would not apply, where the crime is one in which there may be a "party injured," and the complaint is made by one other than such party.

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

1605.

STOCK OF FOREIGN CORPORATION—EXEMPTION FROM LISTING  
UNDER SECTION 192, GENERAL CODE, DISCUSSED.

*SYLLABUS:*

*When stock of a foreign corporation had been exempted from listing by Ohio stockholders in 1926, by the action of the foreign corporation making the election provided for in Section 192, General Code, those stockholders would be justified in omitting the listing of such stock in 1927, notwithstanding the corporation had until June 11, 1927, to indicate whether it would so elect for the year 1927. The foreign corporation having so elected in June, 1927, the stock was exempt from listing and taxation in the hands of Ohio stockholders for the year 1927.*

COLUMBUS, OHIO, January 20, 1928.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your recent communication, in which the following questions are submitted for my opinion:

"1. In 1926 but prior to April 11th, a foreign corporation under Section 192 filed with this commission its report and election to pay the Ohio franchise tax on the full value of its stock. In accordance with this election it paid full franchise tax for 1926. No further or other report or election so to pay was filed by it until June, 1927.

Is or is not the stock of such company exempt from listing and taxation in this state in the year 1927,

- (a) when held by an Ohio corporation on January 1st,
- (b) when held by an individual on April 10th.

2. In 1926 but subsequent to April 11th, a foreign corporation filed a similar report and election and in like manner paid the resulting franchise tax for the year 1926. No further report or election was filed by it until June of the present year.

Is or is not its stock exempt from listing and taxation in this state in the year 1927,

- (a) when held by an Ohio corporation on January 1st,
- (b) when held by an individual on April 10th."

Your questions require consideration of the following statutes:  
Section 5404-1, General Code, which provides:

"All the listing and valuation of the personal property, moneys, credits, investments in stocks, bonds, joint stock companies, or otherwise, of incorporated companies, \* \* \* shall be listed, valued and ascertained as of the first day of January, annually. \* \* \* "

Section 5366-1, General Code, which provides :

"The listing of all personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, except the stock in trade of transient persons, shall be made between the second Monday of April and the first Monday of May annually, except as otherwise provided.

The listing and valuation of all such property for taxation shall be made as of the day preceding the second Monday of April, annually, and all personal property, moneys, credits, and investments except as otherwise provided by law shall be listed and valued with respect to the ownership thereof on said date and in the place where then taxable, provided that the provisions of this section shall not apply to the \* \* \* returns made by incorporated companies, \* \* \* ."

Section 192, General Code, which provides :

"No person shall be required to list for taxation a share of the capital stock of an Ohio corporation; or a share of the capital stock of a foreign corporation, the property of which is taxed in Ohio in the name of such corporation; or a share of the capital stock of any other foreign corporation provided such corporation, for the privilege of exercising its franchise in Ohio, elects to pay and pays annually a franchise tax at the times, in the manner, on the basis and in the amount prescribed by law for domestic corporations."

Section 5495-2, General Code (112 O. L. 411), being Section 3 of Amended Substitute Senate Bill No. 22, filed in the office of the Secretary of State, May 12, 1927, which provides :

"Within thirty days after the taking effect of this act and annually thereafter, between the first day of January and the thirty-first day of March each corporation, incorporated under the laws of this state for profit, and each foreign corporation for profit, doing business in this state or owning or using a part or all of its capital or property in this state, or having been authorized by the Secretary of State to transact business in this state, shall make a report in writing to the Tax Commission in such form as the commission may prescribe. It shall be the duty of the commission to furnish corporations, on request, copies of the forms prescribed by it for the purpose of making such report."

Section 5499, General Code (112 O. L. 413), being Section 7 of Amended Substitute Senate Bill No. 22, supra, which provides :

" \* \* \* Provided, further, if any foreign corporation elects, as provided by law, to exempt its shares of stock from taxation in Ohio as personal property, it shall pay in lieu of the franchise tax prescribed herein, a franchise tax upon the entire value of its issued and outstanding shares of stock determined as aforesaid, and without apportionment. A foreign corporation making this election shall set forth such fact in its annual report to the Tax Com-

mission and thereupon its franchise fee shall be computed upon the entire value of its issued and outstanding stock as herein provided. \* \* \* ”

Section 5495-1, General Code (112 O. L. 410), being Section 2 of Amended Substitute Senate Bill No. 22, which provides :

“ \* \* \* Each domestic corporation shall be required to file its first report and pay the tax thereon in and for the calendar year immediately succeeding the date of its organization and each foreign corporation shall similarly report and pay in and for the calendar year immediately succeeding its admission. \* \* \* ”

In two recent opinions of this office, being No. 606, dated June 13, 1927, and No. 1098, dated October 3, 1927, consideration was given to the manner of making the initial election of a foreign corporation under Section 192 of the General Code and the time when such election must be made in order to relieve Ohio stockholders of said corporation of the duty of listing its stock for taxation. Your present inquiry necessitates a discussion of the rights and duties of such stockholders in a year subsequent to the year in which the initial election was made.

In Opinion No. 1098, just referred to, it was stated that Section 5499 of the General Code, heretofore quoted, requires that the election of a foreign corporation must be made annually. That is to say, the election must affirmatively appear in the annual report of the corporation and, unless such election does so appear, the Tax Commission should compute the tax on the basis of an ordinary foreign corporation. Hence it may well be said that the law now requires an annual reaffirmance of the intention of the corporation to be taxed as an Ohio corporation so as to relieve its stockholders in Ohio of the duty of listing its stock for taxation. Your inquiry is possibly engendered by the fact that in the year 1927, by reason of the change of the law, corporations were not required to make their annual reports until the 12th day of June, although for all years hereafter such report must be submitted between the 1st day of January and the 31st day of March. This is the substance of the requirements of Section 5495-2, hereinbefore quoted.

It does not follow necessarily, however, from the fact that the annual report in 1927, or in other years, may in point of time be subsequent to the date as of which any class of stockholders is required to list personal property, that such stockholders need list such stock where the corporation has in the preceding year made its election to pay and paid as an Ohio corporation in accordance with law. Such a construction would, in my opinion, be unworkable and unreasonable in that it would require necessarily a separate and distinct election annually prior to the first of each year and also the reassertion of the election in the annual report. The statute plainly provides “a foreign corporation making this election shall set forth such fact in its annual report to the Tax Commission.” As I have before stated, this is in the nature of a confirmation of the original election which, by reason of its restatement in the annual report, is continued in effect.

Construing the sections hereinbefore quoted together, I am of the opinion that any stockholder of a foreign corporation which has once elected is warranted in omitting from his return the stock of such corporation until it affirmatively appears from the annual report of such corporation, or otherwise, that the corporation has abandoned its previous election and resumed the taxable status of an ordinary foreign corporation. In other words, there is a presumption of continuity as to the original election, which may only be rebutted by action on the part of the corporation, which would ordinarily appear in the annual report. Applying the principle just discussed to the questions you present, it is apparent that they must all be answered in the affirmative. The

fact that the annual report of the corporation is not filed until after the stockholders have made their returns is, in my opinion, immaterial. Such stockholders are justified in assuming that the corporation, having in the preceding year made the election to pay annually as an Ohio corporation, will continue so to pay and evidence its renewed intention in the succeeding annual report. In the cases you cite, the reaffirmance of the election was made by the corporation in June of 1927, at the time fixed by law, and this action operated to exempt the stock from listing and clearly made the omission of it proper. Should a foreign corporation in any instance fail to so reaffirm and Ohio stockholders have already filed their returns omitting the stock of such corporation, there is authority in the county auditor to make the necessary correction in the returns.

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

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1606.

MUNICIPAL UNIVERSITY--BOARD OF DIRECTORS MAY BY RESOLUTION ASSUME CONTROL OF FUNDS DERIVED FROM BOND ISSUE BY MUNICIPALITY FOR UNIVERSITY PURPOSES.

*SYLLABUS:*

*Under the provisions of Sections 7909 and 7910, General Code, as amended (112 O. L. 105, and 112 O. L. 364, 380), the board of directors of a municipal university may, by the adoption of a resolution for the purpose, assume control of funds derived from the sale of bonds issued by the municipal corporation for constructing, improving or equipping buildings of such municipal university, and require the same to be paid over to such board.*

COLUMBUS, OHIO, January 20, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This is to acknowledge receipt of your recent communication in which you refer to Sections 7909 and 7910, General Code, as amended by the last General Assembly, relating to the funds of municipally owned universities and colleges and request my opinion on the question therein stated, as follows:

“When bonds are authorized and sold by a city council for university purposes must such funds be paid over to the board of directors of the university, following the adoption of a resolution to that effect by such board?”

I assume that the funds referred to in your question refer to those derived from the issue and sale of bonds for the purpose of constructing or improving buildings of a municipally owned university or college; for I know of no statutory provision authorizing a municipal corporation to issue bonds for any other purpose with respect to the affairs of a university or college owned and controlled by such municipal corporation.

Section 7909, General Code, as amended, 112 O. L. 105, was passed March 31, 1927, approved by the governor April 13, 1927, and became effective July 12, 1927. Section 7910, General Code, was amended as a part of the Uniform Bond Act, 112 O. L. 364,