

Sections 154-28, et seq., of the General Code, have no bearing upon the question before us for consideration.

It was clearly the intention of the legislature that all the powers and duties theretofore imposed by law upon the Department of Public Welfare in connection with the two schools should be transferred to the Department of Education. One of the duties heretofore exercised by your department in connection with said schools was to accept and manage any gift, devise or bequest of money made for their use. Said power was transferred by the legislature in Amended Senate Bill 101, passed by the 87th General Assembly, to the Department of Education.

It is, therefore, my opinion that the trust funds in your hands which have been received for the benefit or use of the State School for the Blind or the State School for the Deaf, should be transferred and given into the possession of the Department of Education for proper administration by that department.

Respectfully,
EDWARD C. TURNER,
Attorney General.

920.

APPROVAL, BONDS OF THE VILLAGE OF BAY, CUYAHOGA COUNTY,
OHIO—\$62,662.43.

COLUMBUS, OHIO, August 26, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

921.

FEES—METHOD OF COMPUTING FEES OF FOREIGN CORPORATIONS
WHO ARE DOING BUSINESS IN OHIO.

SYLLABUS:

Method of computing fees payable by foreign corporations for the right to do business in Ohio under Senate Bill 295 discussed.

COLUMBUS, OHIO, August 26, 1927.

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

DEAR SIR:—This will acknowledge your recent communication in which you ask me to advise you as to the method to be employed in computing fees payable by foreign corporations under the provisions of Senate Bill 295, effective August 29, 1927.

You have also enclosed with your communication two letters of interested persons regarding the method of computation and I shall use one of the examples set forth in one of the letters for the purpose of my discussion.

Senate Bill No. 295 is entitled "An Act to amend Sections 183, 184 and 185 of the General Code, relative to the terms and conditions upon which foreign corporations may transact business in Ohio." The act in full is as follows:

"Section 1. That Sections 183, 184 and 185 of the General Code be amended to read as follows:

Section 183. Before doing business in this state, a foreign corporation organized for profit and owning or using a part or all of its capital or plant in this state shall make and file with the secretary of state, in such form as he may prescribe, a statement under oath of its president, secretary, treasurer, superintendent or managing agent in this state, containing the following facts:

1. The number of shares of authorized capital stock of the corporation and the par value, if any, of each share.

2. The name and location of the office or offices of the corporation in Ohio and the names and addresses of the officers or agents of the corporation in charge of its business in Ohio.

3. The value of the property owned and used by the corporation in Ohio, where situated, and the value of the property of the corporation owned and used outside of Ohio.

4. The proportion of the capital stock of the corporation represented by property owned and used and by business transacted in Ohio.

Section 184. From the facts thus reported and any other facts coming to his knowledge, the secretary of state shall determine the proportion of the capital stock of the corporation represented by its property and business in this state, and shall charge and collect from such corporation for the privilege of exercising its franchise in this state, upon the proportion of its authorized capital stock represented by property owned and used and business transacted in this state, a fee equal to the sum of

(a) Ten cents for each share up to and including ten thousand shares;

(b) Five cents for each share in excess of ten thousand shares up to and including fifty thousand shares;

(c) Three cents for each share in excess of fifty thousand shares up to and including one hundred thousand shares;

(d) Two cents for each share in excess of one hundred thousand shares up to and including one hundred and fifty thousand shares;

(e) One cent for each share in excess of one hundred and fifty thousand shares.

In no event, however, shall the fee be less than twenty-five dollars.

Upon payment of such fee the secretary of state shall make and deliver to such foreign corporation a certificate that it has complied with the laws of Ohio and is authorized to do business therein, stating the amount of its authorized capital stock and the proportion of such authorized capital stock represented in this state.

Section 185. A corporation which has filed its statement and paid the fee prescribed by the preceding two sections and which thereafter shall increase the proportion of its capital stock, represented by property used and business done in this state, shall file within thirty days after such increase an additional statement with the secretary of state, and pay upon the increase of its authorized capital stock represented by property owned and business transacted in this state, a fee equal to the sum of

- (a) Ten cents for each share up to and including ten thousand shares;
- (b) Five cents for each share in excess of ten thousand shares up to and including fifty thousand shares;
- (c) Three cents for each share in excess of fifty thousand shares up to and including one hundred thousand shares;
- (d) Two cents for each share in excess of one hundred thousand shares up to and including one hundred and fifty thousand shares;
- (e) One cent for each share in excess of one hundred and fifty thousand shares.

Section 2. That original Sections 183, 184 and 185 of the General Code be, and the same are hereby repealed."

The principal change in the sections amended by this act is that which makes the fee payable upon the basis of the number of shares rather than upon the par value of stock. The history of these sections is somewhat interesting.

Prior to the enactment of the no par share provisions of the General Code, these sections provided a fee of one-tenth of one per cent upon the proportion of the authorized capital stock represented by property owned and used and business transacted in this state. This was, of course, upon the assumption that all stock would have par value and the determination of the fee was, therefore, upon the dollar basis.

Upon the enactment of the no par provisions, Section 8728-11 was included, which prescribed that where a foreign corporation had no par shares outstanding, the fee to be charged by the secretary of state, under Sections 184 and 185 of the General Code, should be five cents for each share. This was manifestly necessary in view of the fact that the no par shares did not permit of any determination of dollar value. Section 8728-11 was, however, at least in some respects, held unconstitutional by the Supreme Court of the United States in *Air-Way Electric Appliance Corporation vs. Day*, 266 U. S., 71, and the legislature thereupon repealed the section. As a result of the repeal there apparently existed no method for computing the fee to be paid by a foreign corporation with no par stock upon its admission to do business in this state or upon the increase of the proportion of its capital stock represented by property owned and business done in this state. The secretary of state thereupon requested an opinion of my predecessor as to what course should be pursued. Under date of June 19, 1925, a letter of this department outlined to the secretary of state the method to be used, the conclusion being that, in view of the air-way decision, the legislature by its subsequent repeal of section 8728-11 had determined to place the assessment of fees on an asset basis. My predecessor held that the old formula for determining the proportionate amount of business done should be followed and the resulting fraction should be multiplied by the fair value of the stock as determined by the secretary of state. In the event that a corporation had both par and no par stock, either the par value or the fair value of the stock, whichever should be the greater, should be used as the basis of determining the fee payable.

By the enactment of Senate Bill 295, return has been made to a more or less arbitrary basis for the determination of the admission fee of a foreign corporation. The old formula for the determination of the proportion of the capital stock is still retained and assessment is made upon that proportion at the rate of ten cents per share for the first ten thousand shares, five cents per share for each share in excess of ten thousand shares up to and including fifty thousand shares, and so, as set forth in the act quoted above. This assessment is irrespective of any question of the asset value of the stock. The computation, therefore, becomes very simple and I assume that you will have no difficulty in determining the proper amount to be assessed in the case of a corporation newly qualified to do business in this state.

In the interest of clarity, I shall repeat the formula to be used.

To determine the amount to be charged a corporation seeking qualification to do business under the provisions of section 184 of the General Code, as amended in Senate Bill 295, you should divide the sum of the property owned and business done in this state by the total amount of property owned and business done. The resulting fraction should be multiplied by the total number of authorized shares of stock of the company. The result will be the proportion of the authorized capital stock represented by property owned and business done in this state and your fees should be assessed in accordance with the schedule prescribed in Section 184 as amended.

There is an apparent difficulty in interpreting section 185 of the General Code, as amended, where the company has qualified to do business under the old initial fee law and has now increased the proportion of its capital stock represented by property owned and business done in this state. I will assume, for purposes of illustration, a corporation which had an authorized capital stock consisting of 30,000 shares of par value of \$100.00 each and 30,000 of no par shares. Upon its qualifying to do business, the proportion of its business and property in Ohio upon which it paid the initial tax was ten per cent. However, the actual value of its capital stock was \$4,000,000. Upon this basis the fee paid under section 184 of the General Code, as it then stood, was \$400.00. Assuming that this corporation should increase the proportion of its capital stock in Ohio to fifteen per cent, the question is, what fee would be payable upon the effective date of Senate Bill 295. For the purpose of this computation, the initial fee paid may be disregarded. The only thing of materiality is the number of shares outstanding at the time of the initial qualification and the proportion of the business and property in Ohio. The total number of shares outstanding was 60,000 and the proportion of its business and property in Ohio was ten per cent., so that the proportion of its capital stock was 6,000 shares. The increase of the proportion to fifteen per cent would manifestly increase the number of shares to 9,000, representing the proportion of its capital stock employed in Ohio. The difference between the two is 3,000 shares, upon which would be payable the fee as prescribed in section 185, as amended, which would be \$300.00.

Another illustration will perhaps be valuable. Let us assume that a corporation originally qualified with 100,000 shares of no par stock and the actual value of the capital stock was \$100,000. Let us further assume that the proportion of its business and property in Ohio was ten per cent. The fee in this event under the old law would have been one-tenth of one per cent upon \$10,000, which would be \$10.00. The proportion of its capital stock represented in this instance would have been 10,000 shares. Let us further assume that after the effective date of the new act the corporation increases its capital to 200,000 of no par value, the actual proportion of its business and property in Ohio remaining the same. The proportion of its capital stock would thereupon become 20,000 shares and there would be payable the difference between 20,000 shares and 10,000 shares, or a fee upon 10,000 shares of stock. At the prescribed rate found in section 185 of the General Code, as amended, the fee to be paid would be \$1,000.

The difficulty which you have encountered is doubtless due to the fact that heretofore there has been given consideration to the actual value of the capital stock, whereas the determination of the fee under the new act is based upon the number of shares only. In order, therefore, to determine the amount of the fee for an increase of proportion, it is necessary to compute the proportion of the authorized capital stock as it existed at the time of the initial qualification in spite of the fact that that determination was not material at the time the initial qualification was had. The

difference between the proportion resulting from this determination (which can be made readily from the forms filed at the time of the initial qualification) and the proportion of the authorized capital stock determined as of the date of the increase, will be the basis of the amount of fee to be charged for such increase.

Respectfully,
EDWARD C. TURNER,
Attorney General.

922.

TRUST COMPANIES—STATUTORY PROVISIONS AND LIMITATIONS
RELATIVE TO INVESTMENT DISCUSSED.

SYLLABUS:

Statutory provisions and limitations relative to investment by trust companies discussed.

COLUMBUS, OHIO, August 26, 1927.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I have an inquiry from Joel S. McKee, National Bank Examiner, which I desire as a matter of courtesy to answer. I am therefore directing opinion to you as if the request had come from you, and a copy thereof will be mailed to Mr. McKee. This inquiry is as follows:

"I would be pleased to have you give me your opinion as to the legality for investment of trust funds in Ohio of bonds of the following classes:

1. A first mortgage real estate bond on an apartment house or hotel in Chicago or New York. The total mortgage is a 60% loan or less.
2. A bond such as the above which is a part of an issue which exceeds 60% of the appraised value of the property.
3. A collateral trust bond of an Eastern Company which is secured by first mortgages on improved property which comply with the 60% law limit but which are on property outside of Ohio or a contiguous state. This bond is secured by 100% of such collateral mortgages.
4. A collateral trust bond of the above nature secured by the same percentage of mortgages, but the collateral mortgages are made for more than 60% of the appraised value of the property."

The sections of law relating to your inquiry are so far as pertinent as follows:

Section 710-166. "A trust company may invest in or loan its trust funds upon the securities, bonds and other interest-bearing obligations enumerated in Sections 111, 112 and 140 of this act, but subject to all limitations as to the amount of the investment or loan therein or thereon as provided by law, and in stocks and bonds of corporations when authorized by the affirmative vote of the board of directors, or of the executive committee of such trust company."