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FOREIGN CORPORATION—LICENSED UNDER OHIO FOREIGN CORPORATION ACT—ACQUIRED REPRESENTATIVE IN THIS STATE—ISSUED SHARES—CORPORATION SURRENDERED LICENSE AND SUBSEQUENTLY BECAME RELICENSED—SECTIONS 8625-9, 8625-10, 8625-11, G. C.—FEE PAYABLE TO SECRETARY OF STATE—FIRST REPORT FILED—SECTION 8625-7 G. C.—SHOULD BE COMPUTED UNDER PROVISIONS OF SECTION 8625-11, G. C.

SYLLABUS:

Where a foreign corporation has been licensed under the Ohio Foreign Corporation Act and has acquired a representation in this state of its issued shares under Sections 8625-9, 8625-10 or 8625-11, General Code, and such corporation surrenders its license and subsequently becomes relicensed under this act, the fee payable to the Secretary of State on the first report thereafter filed pursuant to Section 8625-7, General Code, should be computed under the provisions of Section 8625-11, General Code.

Columbus, Ohio, October 31, 1951

Hon. Ted W. Brown, Secretary of State  
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

"B. M. Company, a Michigan corporation, was licensed to transact business in Ohio in 1916 and was issued License No. 49114. The corporation remained qualified until December 31, 1948, at which time a Certificate of Surrender of License was filed in accordance with the provisions of Ohio General Code Section 8625-20.

"The Surrender of License was effected under the mistaken impression by the corporation that it was no longer transacting business in this State. On February 11, 1949, having realized that this impression was in error, the corporation again became qualified to transact business in Ohio and was issued License No. 211759.

"On June 22, 1950, the corporation filed its first Annual Statement of Proportion of Capital Stock under License No. 211759 required by Ohio General Code Section 8625-7. Said statement showed that the corporation had represented in this state 33,340 shares upon which this office computed the fee due to be \$1,016.80 under the provisions of Ohio General Code Section 8625-9.

"C, attorney for the corporation contends however that the corporation should have been allowed a credit for 24,998 shares, the greatest number of shares represented under License No. 49114 and that the fee due should have been based upon the difference between these two amounts in accordance with Ohio General Code Section 8625-11. Allowing such credit the fee due on the Annual Statement of Proportion of Capital Stock would be \$166.84.

"The question, therefore, for your consideration is: In computing the fee due on the First Annual Statement of Proportion of Capital Stock filed by a foreign corporation after being licensed in Ohio, is the corporation entitled to a credit for the greatest number of shares previously represented in Ohio under a License previously held by the corporation but withdrawn?"

Section 8625-20, General Code, relates to the surrender of license by a foreign corporation. This section reads as follows :

"A foreign corporation may surrender its license upon

complying with the requirements of Section 5495-2 of the General Code by filing with the secretary of state a certificate of surrender signed by its president, vice president, secretary, or treasurer, or by the receiver, trustee in bankruptcy, or other liquidator of such corporation setting forth:

“(1) The name of the corporation and of the state under the laws of which it is incorporated;

“(2) That it surrenders its license;

“(3) The address to which the secretary of state may mail any process against such corporation that may be served upon him, and any other notices, certificates or statements.

“In lieu of filing such certificate of surrender there may be filed a certificate of the secretary of state or other proper official of the state under the laws of which the corporation is incorporated, certifying that said corporation has been dissolved or its corporate existence otherwise terminated, or a certified copy of an order of court terminating the existence of such corporation, but such certificate shall be accompanied by the information required by paragraph 3 above.

“For filing any such certificate or order of court hereunder there shall be paid to the secretary of state a filing fee of ten dollars.

“The secretary of state shall thereupon cancel the license of such corporation and shall make a notation thereof upon his records and shall mail to the corporation a certificate of his action so taken.”

While this section does not specifically so provide, I believe it can be stated as a general proposition that a foreign corporation which surrenders its license hereunder must be presumed to surrender all rights, franchises and privileges it enjoyed under such license except such as are plainly preserved to it under other provisions of the Ohio Foreign Corporation Act.

The question thus presented is whether any such rights are preserved under the provisions of Sections 8625-9 and 8625-11, General Code. These sections read as follows:

Section 8625-9:

“A foreign corporation not heretofore licensed to transact business in this state shall pay to the secretary of state, as the initial installment of the license fee, a fee based on the number of its issued shares represented in this state, as shown by its first

report filed under this act and determined in the manner hereinbefore set forth, and such fee shall be the same as the fee which a domestic corporation, having authority to issue the same number of shares as such foreign corporation has represented in this state, is required to pay on filing its original article (sic), in (In) no event, however, shall the fee be less than five dollars. Upon the payment of such fee, the corporation shall be authorized to have such number of shares represented in this state."

Section 8625-11:

"In the event that any report filed under this act subsequent to the first report shall disclose that any foreign corporation has represented in this state a number of issued shares in excess of the number theretofore determined to be represented, the corporation shall pay to the secretary of state an additional installment of the license fee based upon such number of additional shares, computed as follows:

"The secretary of state shall first compute a fee upon the entire number of issued shares of such corporation represented in this state as shown by such report on the basis set forth in section 8625-9 of the General Code, and *shall then compute a fee on the same basis on the number of issued shares which such corporation has been authorized theretofore to have represented in this state, and the fee payable shall be the difference between such two fees so computed.*" (Emphasis added.)

It will be observed that Section 8625-9, General Code, requires the payment of an initial installment of the license fee only of those corporations "not heretofore licensed to transact business in this state \*\*\*." The word "heretofore" refers, of course, to the effective date of the act, August 7, 1931, a view supported, incidentally, by the provision in Section 8625-10, General Code, for special treatment of such corporations. The corporation which is the subject of your inquiry was licensed in Ohio prior to August 7, 1931, and since the language of Section 8625-9, General Code, makes no exceptions in the case of corporations which have surrendered a license and have thereafter been issued a new license, I must conclude that it cannot be classed as one which was "not heretofore licensed" within the meaning of this section. Accordingly, the fee, if any, payable on its first report under the new license would be computed as provided in Section 8625-11, General Code.

It is to be observed that the latter section refers to "any report filed under this act subsequent to the first report \*\*\*." It is obvious that the first report filed by the corporation *under its second license* is not its first

report *under this act*. Moreover, when this section refers to “a number of issued shares in excess of the number theretofore determined to be represented,” in the absence of any language indicating the contrary, the implication is that reference is made to the number theretofore determined to be represented under *this act* rather than under the *current license*. This implication is found in the opening words of the first sentence of Section 8625-11, General Code, viz., “In the event that any report filed *under this act* \*\*\*.” (Emphasis added.)

Accordingly, in specific answer to your inquiry, it is my opinion that where a foreign corporation has been licensed under the Ohio Foreign Corporation Act and has acquired a representation in this state of its issued shares under Sections 8625-9, 8625-10 or 8625-11, General Code, and such corporation surrenders its license and subsequently becomes re-licensed under this act, the fee payable to the Secretary of State on the first report thereafter filed pursuant to Section 8625-7, General Code, should be computed under the provisions of Section 8625-11, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General