

"A majority of the board may examine applicants and grant certificates. An applicant for a county teachers' certificate may, if he so elects, take one-half of the subjects in which he is to be examined on one day and the remainder one-half not later than the second regular examination day thereafter. The subjects to be taken the first day by an applicant shall be determined by the board of county examiners.

If an applicant electing to take the examination in two days fails to obtain on the first day a grade of seventy-five per cent or more, in any subject or subjects, such applicant may elect to be re-examined in such subject or subjects on the second day on which such applicant is to be examined. As a condition of an applicant's being admitted to take the examination he shall pay to the board for the use of the county board of education fund a fee of fifty cents. Applicants taking the examination in two parts shall make on the date when each part is taken an application accompanied with a fee of fifty cents."

You state in your communication that this section has been interpreted and that said interpretation is that if an applicant for said certificate has elected to take all of the branches at one examination and fails to pass in any of the subjects, he may not be re-examined in those subjects at the subsequent examinations. It is apparent that this interpretation is correct. The language of the statute is quite plain and its operation is uniform. Any applicant who is seeking such certificate may be examined in all branches required by the board of examiners on one day, or, if he or she elects so to do, may take two separate examination days for that purpose. This right is optional with the applicant and available to all. If the applicant has elected to take the examination in two parts, such applicant must pay a fee of fifty cents for each examination. In case he or she fails in one or more branches in which the examination is had on the first day, such applicant may be re-examined in those subjects, as well as being examined on the remaining subjects, at the next examination day. If, however, the applicant elects to take all the branches in one day and fails in any one or more of said subjects, such applicant has a right to be re-examined in all branches at the next examination by making application and paying the proper fee. This does not place any applicant in any unfair position, because all applicants have a right to take the examination in two sittings if they so wish.

It is my opinion, therefore, that applicants for county teachers' certificates, who elect to be examined in all subjects at one examination, but who fail in one or more subjects, must be re-examined in all branches before they are entitled to a certificate.

Respectfully,

GILBERT BETTMAN,
Attorney General.

750.

CORPORATION—FEES CHARGEABLE FOR FILING CERTIFICATE SHOWING CHANGE OF STATUTORY AGENT WITH SECRETARY OF STATE—SECTION 8623-129, GENERAL CODE, APPLICABLE TO DOMESTIC CORPORATIONS ONLY.

SYLLABUS:

Section 8623-129, General Code, providing for the fee to be charged by the Secretary of State for filing an appointment of an agent to take the place of an agent pre-

viously appointed upon whom process, tax notices or demands against a corporation may be served, applies solely to corporations organized under the laws of Ohio and has no reference to such appointments of agents of foreign corporations.

COLUMBUS, OHIO, August 15, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your letter of recent date, requesting my opinion as to the proper fee to be charged for filing the designation of an agent of a foreign corporation upon whom process may be served within this state, under the provisions of Section 181, General Code, such certificate designating a change of such agent. Attached to your letter is a communication from Mr. Morris Lopper, which is in part as follows :

“I present the following question : What charge will be made for filing the certificates showing change of statutory agent, after July 23, of this year ?

It has been customary for your office to charge the sum of \$5.00 for the filing of the certificate showing change of statutory agent. This, I understand, is done pursuant to General Code of Ohio, Section 176, as amended in 1927, which reads as follows, in part :

‘ * * * for filing any miscellaneous certificate or paper not required to be recorded, the sum of \$5.00 * * * ’

As far as I know there is no specific statute which states that the Secretary of State shall charge a fee of \$5.00 or any amount, for the filing of a change of statutory agent, either in relation to foreign corporations or to domestic corporations, and the charges heretofore made by your office are made under the general provision above noted.

At the last session of our legislature the General Corporation Act was amended. In that amendment the legislature has enacted the following provision, which I believe, is in point ; I refer to Section 129 of the amended act which will be known as General Code, Section 8623-129, which reads, in part, as follows :

‘Process in any suit, action or proceeding against any corporation or any tax notice, demand or any other notice required or permitted by statute to be served upon a corporation may be served upon such corporation by delivering a copy thereof to its designated agent or by leaving a copy thereof at his address as the same appears upon the record in the office of the secretary of state.

If any person so appointed as agent shall change his address within the county, the corporation shall forthwith file with the secretary of state a certificate setting forth the new address, for the filing of which certificate the secretary of state shall charge and collect a fee of one dollar.

If any person so appointed as agent shall die, remove from the county or resign, or if the corporation shall revoke any such appointment, the corporation shall forthwith, by resolution of its board of directors, appoint another person as agent and file a certificate of such appointment with the secretary of state, for the filing of which certificate the secretary of state shall charge and collect a fee of one dollar, but no resignation of an agent shall be effective until his successor has been appointed.’

As will be noted by reading the section above quoted, the legislature in amending the General Corporation Act included the specific provision that there shall be a charge of \$1.00 for the filing of a certificate showing change of statutory agent. This statute recites by its terms that it relates to cor-

porations without designating whether it relates to foreign corporations or domestic corporations or both. I believe that the terms throughout the section above quoted are general terms and relate to both domestic and foreign corporations. The question is whether or not the Legislature in the above amendment intended to include foreign as well as domestic corporations. That the problem is one of intention is evidenced by the following citation from Vol. 14A, Corpus Juris, page 1241, paragraph 3946b:

'Whether or not the term "corporation" when used in a statute applies to foreign corporations operating within the state depends largely upon the subject matter of the statute, its policy, and the context in which the term is employed. The word generally applies to a foreign corporation, when there is nothing in the words of the statute itself which would indicate an intention on the part of the legislature to limit its effect to domestic corporations, or where there are no sufficient considerations of local or state policy from which there can be inferred a motive on the part of the legislature to restrict the operation of the statute to domestic corporations.
* * *'

It seems to me that the legislature having enacted a general provision, providing for a charge of \$1.00 for filing of a certificate showing change of statutory agent, without designating whether it relates to foreign or domestic corporations or both, and having made no positive provision for such a charge to foreign corporations, it intended that the general act apply both to domestic and foreign corporations. Had the legislature intended otherwise, it could have, in a dozen words, stipulated a different fee to be charged to foreign corporations for the same service.

The matter is important to the writer because it concerns about seventy corporations. It is of importance to your office because it relates definitely to charges which you may make. It is important because it relates to all corporations, both foreign and domestic.

If your corporation attorney does not agree with me on the statement of law in this case, I ask that you please secure the opinion of the Attorney General."

There can be no question but that the term "corporation" when used in a statute which contains nothing to indicate an intention on the part of the Legislature to limit its effect to domestic corporations applies to foreign corporations operating within the state, as well as to domestic corporations, as set forth in the above quotation from Corpus Juris. The authorities in support of this principle are numerous. It therefore becomes necessary to determine whether or not Section 8623-129, General Code, contains any wording indicative of a legislative intent to limit its effect to domestic corporations. The first paragraph of this section provides for filing with the articles of incorporation a written appointment of an agent upon whom process, tax notices or demands against "every corporation hereafter incorporated under this act" may be served. This section is part of the General Corporation Act of Ohio, which act provides in its entirety for corporations organized under the laws of Ohio. The second paragraph refers to "every corporation heretofore incorporated under the laws of this state." The fourth paragraph provides that "any agent appointed as aforesaid shall be a natural person who shall be a resident of the county in which the principal office of the corporation is located. * * * " If this section were held to apply to foreign corporations, as well as domestic, an impossible situation may here arise, for the reason that in the case of a foreign corporation organized under the laws of New York, for instance, with its principal office in New York City, it would be impossible to appoint an agent in the State of Ohio upon whom process

may be served, which agent was at the same time a resident of New York City. The paragraph of Section 8623-129, providing a fee of one dollar to be charged for subsequent appointments of agents refers to "any person so appointed as agent." It is my opinion that this provision is only applicable to agents of corporations organized under the General Corporation Act of the State of Ohio.

In view of the foregoing, it necessarily follows that the only provision relative to the fee to be charged for filing subsequent appointments of statutory agents of foreign corporations as required by Section 181, General Code, is contained in paragraph 9 of Section 176, General Code, quoted above.

Respectfully,
GILBERT BETTMAN,
Attorney General.

751.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
FRANKLIN, HAMILTON AND STARK COUNTIES.

COLUMBUS, OHIO, August 16, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

752.

DISAPPROVAL, ABSTRACTS OF TITLE TO LANDS OF KATHERINE
W. KOHL, ET AL., IN THE CITY OF XENIA, GREENE COUNTY.

COLUMBUS, OHIO, August 16, 1929.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication submitting for my examination and approval abstract of title to Block No. 7, Dodds' Second Addition to the city of Xenia, Ohio, and the several lots into which said block is divided.

Block No. 7 of said addition consists of twelve lots, numbered from one to twelve, inclusive. Of these lots, Lot No. 1 is owned of record by one Katherine W. Kohl, Lot No. 2 by one Adolph Moser, Lot No. 3 by one Carrie Snyder, Lot No. 4 by James J. Curlett, Lot No. 6 by Eugene Curlett and Eleanor F. Curlett, Lot No. 12 by Arthur C. McCormick and F. Leon Spahr, and the balance of said lots in Block No. 7 are owned of record by William Kauffman and Kate Kauffman, as executors of the estate of Diana Roberts, deceased.

Upon examination of the abstract of title submitted, I find that the above named persons own the several lots standing of record in their respective names by fee