

“Proceedings of a school board providing for an issue of bonds are invalid where the action pertaining thereto was taken at a special meeting from which one member was absent and no written notice of the meeting had been served on each member of the board either personally or at his residence or usual place of business.”

It is therefore my advice that you should not purchase the notes authorized to be issued at said special meeting.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

1442.

WORKMEN'S COMPENSATION LAW — CORPORATION — COMMISSION  
MAY NOT ACCEPT BOND TO AUGMENT FINANCIAL STATUS  
THEREOF THEREBY MAKING IT ELIGIBLE TO PAY COMPENSA-  
TION DIRECT.

**SYLLABUS:**

*If the Industrial Commission of Ohio, acting under the provisions of Section 1465-69, General Code, finds that an employing corporation is not of such financial standing as to render certain the payment of compensation as provided for by the Workmen's Compensation Law of the State of Ohio, it has no authority to require or accept a bond to augment the financial status of such corporation in order to render it eligible to elect to pay compensation direct as provided in said section.*

COLUMBUS, OHIO, August 26, 1933.

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

DEAR SIRs:—I am in receipt of your request for my opinion which reads as follows:

“In connection with the renewal application for authority to operate as self-insurers under the Workmen's Compensation Act of Ohio certain questions have arisen.

The A. Company is an Ohio corporation and has as its subsidiary another Ohio corporation hereinafter designated as the A(1) Company. We are advised that the stock of the A(1) Company is almost entirely, if not entirely, held by the A Company, which A(1) Company has been operating as a self-insurer under the Workmen's Compensation Act of Ohio.

Another corporation, the B Company, a Delaware corporation, which Company is not authorized to do business in Ohio but does business in Ohio through various subsidiary corporations hereinafter designated as the B(1) Company, B(2) Company, B(3) Company and B(4) Company, which Companies have been self-insurers under the Workmen's Compensation Act. The A Company is a self-insurer under the Ohio Workmen's Compensation Act.

It appears that the financial standing of the various subsidiary companies of the A Company and B Company is somewhat limited and their financial ability is largely or partly due to their connection with the parent Company, namely, A Company and B Company and for that reason the Commission deemed it advisable that an additional bond in the sum of \$100,000.00 executed by the A Company on behalf of its subsidiary A(1) Company, and a bond in a like sum executed by the B Company on behalf of each of its various subsidiary companies, such bonds to guarantee the faithful performance of the subsidiaries to furnish compensation and medical and hospital services under the terms of the Workmen's Compensation Act of Ohio.

We are enclosing herewith copy of the charter of the B Company and copies of the proposed bond to be furnished by the B Company on behalf of its various subsidiaries, and the Resolution of the Executive Committee of the B Company authorizing the Vice-President and Secretary of the B Company to execute said bond.

Certain questions as to the legality of these bonds have occurred to the Commission and we would respectfully request your opinion on the legality of these bonds generally and particularly on the following questions:

1. Has the Commission authority under the law to ask for a guaranty bond executed by A Company and B Company on behalf of their various subsidiaries in addition to the usual surety bond?

2. Has B Company authority to execute such a bond under the provisions of its charter in view of the fact that it is a large stock holder in the various subsidiary corporations?

3. Has A Company authority to execute such a bond in view of the fact that it owns most of the stock in its subsidiary company, the A(1) Company and by virtue of the General Code Section 8623-8?

4. In view of the fact that the B Corporation is a foreign corporation not authorized to do business in Ohio, would the execution of such a bond be regarded as 'doing business in Ohio'? Would this situation be altered if the bond were executed outside of the State of Ohio by the B Company?

5. The proposed bond provides that the B Company 'constitutes and appoints ....., Director of the Department of Industrial Relations of Ohio and Secretary of the Industrial Commission of Ohio, or his successor in office, its Attorney in Fact for it and in its name to suffer or accept service in any action or proceeding brought before the Industrial Commission of Ohio or before any court of competent jurisdiction in the Commonwealth of Ohio for or by reason of the promises of the said Attorney in Fact shall be limited in authority to the powers herein described and shall have no authority to suffer or accept service in any other proceeding of any sort whatsoever. This power of attorney shall not be revoked at any time for any reason whatsoever, except upon thirty (30) days' written notice as provided for in paragraph 4 hereof. Said Attorney in Fact herein named shall send by registered mail to said B Company located at ....., a true copy of any notice served upon him as such Attorney in Fact'.

"Would this provision be valid and would service on the Director of the Department of Industrial Relations of Ohio and Secretary of the

Industrial Commission of Ohio, or his successor in office amount to valid service in the event it became necessary to file an action arising out of the provisions of these bonds hereinbefore referred to?"

Upon inquiry, I find that in speaking of one corporation being a subsidiary to another corporation you mean that one corporation owns most of the stock in another corporation which is doing business in this state.

Then, the first question you ask involves a consideration of the status of a corporation organized under the laws of the State of Ohio, most of the stock of which corporation is owned by another corporation organized under the laws of Ohio, and the status of a corporation organized under the laws of Ohio, most of the stock of which is owned by a corporation organized under the laws of a foreign state. In each case, the Ohio corporation, whose capital stock is owned mostly by another corporation, has a somewhat limited financial standing, and there then arises the question whether this limited financial condition can be remedied by the corporation owning most of the stock giving an additional bond, other than that provided for by law when considering the financial standing of the corporation in question.

In discussing this question, we will refer to the foreign and Ohio corporations as stockholders and to the company in question as the corporation.

The right to become a so-called self-insurer under the Workmen's Compensation Law is found in Section 1465-69, General Code.

That section provides that all employers must pay premiums into the state insurance fund.

An employer is defined in Section 1465-60, General Code, as being "every person, firm and private corporation" having in its service "three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written."

Section 1465-69, *supra*, however, contains the following exception:

"And provided further, that such employers who will abide by the rules of the industrial commission of Ohio and as may be of sufficient financial ability to render certain the payment of compensation to injured employes or the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in sections 1465-78 to 1465-89, General Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such fact by the industrial commission of Ohio, elect to pay individually such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the industrial commission of Ohio may require such security or bond from said employers as it may deem proper, adequate, and sufficient to compel, or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation and expenses herein provided for, which shall in no event be less than that paid or furnished out of the state insurance fund, in similar cases, to injured employes or to dependents of killed employes, whose employers contribute to said fund.

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This proviso in Section 1465-69 is to the effect that if the Industrial Commission finds that any employer who will abide by the rules of the Industrial Commission of Ohio, and who "may be of sufficient financial ability to render certain the payment of compensation to injured employes or the dependents of killed employes, etc.", as provided by law, and does not desire to pay premiums into the state insurance fund, may elect to pay the compensation and benefits provided by law to injured employees and the dependents of such as are killed, and "the industrial commission of Ohio may require such security or bond from said employers as it may deem proper, adequate and sufficient to compel, or secure to such injured employees, or to the dependents of such employes as may be killed, the payment of the compensation etc." as is provided for under the Workmen's Compensation Law.

The bond to be given is referred to as a "bond from said employers", which term, evidently refers back to those employers "as may be of sufficient financial ability to render certain the payment of compensation, etc."

When a corporation is seeking the right to become a self-insuring employer, before that right may be exercised by such corporation the Industrial Commission must make a finding of the fact that the corporation itself is of such financial standing as contemplated by the law, that is, "to render certain the payment of compensation". That is a prerequisite necessary before anything further may be done by the corporation. If the Industrial Commission, upon inquiry, finds that the corporation is not of such financial standing, then the corporation has no right to make the election. A finding by the Industrial Commission that the corporation is not of such financial standing, but that the stockholders are in excellent financial standing, does not give the corporation any additional rights.

It is a well established principle of law that a corporation is a separate and distinct entity, separate and apart from the stockholders themselves. In the case of *Bank et al. vs. Trebein et al.*, 59 O. S. 316, the Supreme Court of Ohio held:

"In contemplation of law a corporation is a legal entity, an ideal person, separate from the real persons who compose it."

This is not only the rule of law in Ohio but the general rule. In 14 C. J. at page 52, we find the following statement upon this proposition:

"On the creation of a corporation, as we have seen, the individuality or the corporators or members is merged in the corporate body and the corporation becomes in law, and for most purposes, a legal entity or artificial person entirely distinct from its members and its officers, so that its acts through its members as a corporate body, or through its officers or agents, are regarded as the acts of this legal entity or artificial person as distinguished from the members who compose it, and the property or rights acquired, or the liabilities incurred, by it are regarded as its property, rights, and liabilities as such distinct legal entity, this doctrine applies even in the case of a corporation sole, or a corporation aggregate whose shares are all owned by one or a few persons."

"And the rule applies as well where the stock of a corporation is owned partly or entirely by another corporation as where it is owned by natural persons, so that there is no identity between a corporation owning practically all the stock in another corporation and the latter corporation."

In the instance before us, as above stated, the controlling stockholders are corporations. This does not change the situation at all. One corporation is just as separate and distinct from the other corporation as though the stockholding corporation were an individual.

In the case of *Macon Exchange Bank vs. Macon Construction Co.*, 97 Ga. 1; 25 S. E. 326, it is said:

"Every corporation is a person—artificial, it is true, but nevertheless a distinct legal entity. Neither a portion nor all of the natural persons who compose a corporation, or who own its stock and control its affairs, are the corporation itself; and when a single individual composes a corporation, he is not himself the corporation. In such case, the man is one person created by the Almighty, and the corporation is another person created by law. It makes no difference in principle whether the sole owner of the stock of a corporation is a man or another corporation. The corporation owning such stock is as distinct from the corporation whose stock is so owned as the man is from the corporation of which he is the sole member."

See also *People vs. American Bell Tel. Co.*, 117 N. Y. 241, and *Peterson vs. Chicago, etc., R. Co.*, 205 U. S. 364.

I, therefore, have no hesitancy in concluding that when the Industrial Commission is considering whether or not a corporation is of sufficient financial ability to render certain the payment of compensation to injured employes, etc., it has no right to take into consideration the financial ability of any of the stockholders, whether such stockholders be individuals or corporations. And, unless such employing corporation is of sufficient financial standing, it has no right to make the election.

If the employing corporation is of such financial responsibility it is only required to give the bond provided for by statute, and the Industrial Commission has no authority under the law to require any other bond.

Therefore, my answer to your first question is that the Industrial Commission has no authority under the law to ask for a guaranty bond to be executed by the stockholders of a corporation, whether such stockholders are individuals or corporations, on behalf of the corporation in which the stock is owned, which bond would be in addition to the usual surety bond provided for by law.

Your other questions deal with the right of the stockholders to execute this additional bond, and since the Industrial Commission has no right to require or receive such bond, it is unnecessary to give these questions consideration in this opinion. However, this proposition has recently been passed upon by the Supreme Court of Ohio in the case of *Hayes, Clerk, vs. State, ex rel. The Oldroyd Machine Co.*, 124 O. S. 485, wherein the court held:

"Corporations, other than surety and trust companies organized for the express purpose of becoming sureties and guarantors, have no general power to become surety or guarantors for, or otherwise lend their credit to, any other person or corporation."

In that case The Oldroyd Machine Company was seeking to mandamus the clerk of courts to accept as surety on a supersedeas bond, a bond executed by a corporation engaged in general business and not a surety bond business, which company claimed a financial interest in The Oldroyd Machine Company. The

clerk of courts refused to accept such bond and the Supreme Court held that he was right in so doing. At page 491 of the opinion, the Court referred to and quoted with approval from the case of *Pollitz vs. Public Utilities Commission*, 96 Ohio St., 49, the following language:

“A corporation has no power to enter into contracts of guaranty, or suretyship, or otherwise lend its credit to another, unless expressly authorized by its charter or by statute, except where the power to do so is implied from its express powers as necessary and proper in the furtherance of its legitimate business.”

and then said:

“That rule is applicable to this case.”

I am of the opinion that the same rule is applicable to the questions herein presented.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1443.

APPROVAL, NOTES OF SALEM TOWNSHIP RURAL SCHOOL DISTRICT,  
JEFFERSON COUNTY, OHIO—\$2,223.00.

COLUMBUS, OHIO, August 26, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1444.

APPROVAL, NOTES OF RICHMOND VILLAGE SCHOOL DISTRICT, JEF-  
FERSON COUNTY, OHIO—\$755.00.

COLUMBUS, OHIO, August 26, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1445.

APPROVAL, NOTES OF SPRINGFIELD TOWNSHIP RURAL SCHOOL  
DISTRICT, JEFFERSON COUNTY, OHIO—\$2,546.00.

COLUMBUS, OHIO, August 26, 1933.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*