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FOREIGN CORPORATION—FORMED BEFORE EFFECTIVE DATE OF AMENDMENT—SECTION 1083-18 GC, SECTION 4733.16 RC—AUGUST 6, 1943—WORD “ENGINEER” OR “ENGINEERING”—PART OF CORPORATE NAME SINCE ITS FORMATION—MAY BE GRANTED LICENSE TO TRANSACT BUSINESS IN OHIO—OPINION 114, OAG 1945, PAGE 65, MODIFIED.

## SYLLABUS:

A foreign corporation, formed before the effective date of the amendment of Section 1083-18, General Code, Section 4733.16, Revised Code, to-wit, August 6, 1943, and having had the word “engineer” or “engineering” as part of its corporate name since its formation, may be granted a license to transact business in Ohio. (Opinion No. 114, Opinions of the Attorney General for 1945, page 65, modified.)

Columbus, Ohio, January 21, 1955

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

Dear Sir:

I have before me an application for a license under the Ohio Foreign Corporation Act filed by the Continental Aviation and Engineering Corporation, a Virginia corporation, organized in June 1940. Inasmuch as this corporation has the word “engineering” in its corporate name, you have asked me whether it can be admitted to transact business in Ohio in view of Opinion No. 114, Opinions of the Attorney General for 1945, page 65. The syllabus of that opinion reads as follows:

“From and after the effective date of the amendment of Section 1083-18, General Code, to-wit, August 6, 1943, a foreign corporation organized for profit cannot be granted a license to transact business in Ohio if either the word ‘engineer’ or ‘engineering’ forms a part of its corporate name, regardless of the time when the use of such name was authorized in the state of its incorporation.”

Upon examination of Opinion No. 114, *supra*, and the application which you have presented to me, I find myself unable to agree with that

opinion and believe that it should be modified and that the corporation in question should be admitted to do business in Ohio.

The question before the then Attorney General in 1945 was as to the proper interpretation of Section 1083-18, General Code, Section 4733.16, Revised Code, as amended in 120 Ohio Laws, 145, effective August 6, 1943. That section provides as follows :

“A firm, copartnership, or an association may engage in the practice of professional engineering or surveying in this state, provided only such practice is carried on by professional engineers or surveyors, respectively, who are registered in this state.

“No corporation shall be granted a charter to engage in the practice of professional engineering or surveying, nor shall any corporation formed after August 6, 1943, use or assume a name involving the word ‘engineer’ or ‘engineering’ or any modification or derivative of such term except a nonprofit membership corporation.”

This section was also read in connection with Section 8625-5, General Code, Section 1703.04 (D), Revised Code, which provides in part as follows :

“(D) No such application for a license shall be accepted for filing if it appears that the name of the foreign corporation is prohibited by law or is not readily distinguishable from the name of every other corporation, domestic or foreign, authorized to transact business in this state \* \* \*.”

The problem before me is to determine whether the name in question “is prohibited by law.”

The reasoning of the 1945 opinion is found at page 70 where the author reaches the conclusion that a foreign corporation making application to do business in Ohio for the first time is to be treated as if it were an Ohio corporation seeking a charter for the first time. From this, the author reasoned that since a new corporation could not be formed with the word “engineering” in its corporate name, that therefore no foreign corporation should be admitted.

I find myself unable to agree with this reasoning. The opinion preserves the benefit of a so-called “grand-father” clause to Ohio corporations formed before August 6, 1943, but denies those benefits to foreign corporations chartered before that date even though the statute is silent as to foreign corporations. The author of the 1945 opinion chose to cure

this omission by assuming that the Legislature intended that the words "hereafter formed" as applied to domestic corporations should also embrace the import of "hereafter admitted" as applied to foreign corporations. I find it just as logical to assume that the Legislature, by not referring to foreign corporations, did not intend to deal with them.

It should be pointed out that we are dealing with an Act "relative to the *qualifications*, registration and *practice* of registered professional engineers," and the question of corporate names is at best a side light to that problem. Corporations are prohibited from practicing engineering; and no question of the *practice* of engineering is presented here. We are simply concerned with a possible misuse of the word "engineer," and a consequent misleading of the public by the use of that word. Since the Legislature has not prohibited absolutely the use of the word, and since it has said nothing about foreign corporations, I do not believe that the statute should be extended to prohibit the admission of foreign corporations formed before the effective date of the Ohio statute.

In view of the above it is therefore my opinion that a foreign corporation, formed before the effective date of the amendment of Section 1083-18, General Code, Section 4733.16, Revised Code, to-wit, August 6, 1943, and having had the word "engineer" or "engineering" as part of its corporate name since its formation, may be granted a license to transact business in Ohio. (Opinion No. 114, Opinions of the Attorney General for 1945, page 65, modified.)

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General