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It is true that Section 4 of said act, above quoted, provides "such board of school trustees shall be elected at the next general election." However, such requirement is preceded and qualified by the provision "Whenever the initial resolution provides for the establishment of a new school corporation and the election of a board of school trustees under this act * * *." It is therefore apparent the resolution only provides for the election of two members in 1958 and in the meantime the other members are appointed. Provision is then made for the election of two more members in 1960. When so construed, I am of the opinion said provisions for staggered terms are legal and meet both the requirements of the statute and the resolution.

In answer to your second question, specific authority is given that such resolution may provide the limitations on residence, term of office and other qualifications of members of such board as well as the manner in which they shall be elected or appointed. It is not pointed out that a designation of three districts from which are elected four members, is in any manner a capricious or arbitrary exercise of authority or that the same constitutes a denial of the citizens of the school corporation of equal representation. In any event, even if such fact existed, that could be determined only by a judicial court and in the meantime the only instruments authorizing and controlling the operation of such school corporation are the resolution and said statute.

OFFICIAL OPINION NO. 2

January 13, 1958

Mr. Clarence T. Drayer, Director
Division of Public Works and Supply
301 State House
Indianapolis 4, Indiana

Dear Mr. Drayer:

You have asked my Opinion concerning whether or not your department is violating the law by doing business with foreign corporations not registered with the Secretary of State. Your letter making this request is as follows:
While in New Orleans recently, attending a meeting of the National Association of Purchasing Agents, the Director for the State of Illinois stated that they did not make purchases from out of state corporations unless they were licensed and registered to do business with the State of Illinois. He also said that as a matter of policy they did not buy from out of state individuals or partnerships.

"I find that we are purchasing from many firms who are not registered with our Secretary of State, and this condition has prevailed for many years.

"Will you be kind enough to give me an official opinion as to whether or not we are violating the law for doing business with out of state corporations who are not registered with our Secretary of State?"

The Indiana General Corporation Act requires that any foreign corporation for profit, with certain specific exceptions, must procure a certificate of admission from the Secretary of State before transacting business in this state. Burns' (1948 Repl.), Section 25-301. One section of this act, Burns' (1948 Repl.), Section 25-314, provides penalties for corporations who transact business within the meaning of the act and in violation of its provisions. This section is as follows:

"No foreign corporation transacting business in this state without procuring a certificate of admission or, if such a certificate has been procured, after its certificate of admission has been withdrawn or revoked, shall maintain any suit, action or proceeding in any of the courts of this state upon any demand, whether arising out of contract or tort; and every such corporation so transacting business shall be liable by reason thereof to a penalty of not exceeding ten thousand dollars [$10,000], to be recovered in any court of competent jurisdiction in an action to be begun and prosecuted by the attorney-general in any county in which such business was transacted.

"If any foreign corporation shall transact business in this state without procuring a certificate of admission, or, if a certificate has been procured, after its
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certificate has been withdrawn or revoked, or shall transact any business not authorized by such certificate, such corporation shall not be entitled to maintain any suit or action at law or in equity upon any claim, legal or equitable, whether arising out of contract or tort, in any court in this state; and it shall be the duty of the attorney-general, upon being advised that any foreign corporation is so transacting business in this state, to bring action in the circuit or superior court of Marion County for an injunction to restrain it from transacting such unauthorized business and for the annulment of its certificate of admission, if one has been procured.

"Any agent of any foreign corporation who shall transact for such corporation any business in this state before it shall have procured a certificate of admission or after its certificate shall have been withdrawn or revoked, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one hundred dollars [$100] for each and every such offense." (Our emphasis)

The above section not only makes it a criminal act for a foreign corporation to do business in this state without registering with the Secretary of State, but it also places on the Attorney General the duty of bringing an action in the circuit or superior court of Marion County for an injunction to restrain such corporations from transacting business in this state. In view of these mandatory provisions, I conclude that it would be improper for a department or subdivision of the state to enter into any contract with a foreign corporation which is "doing business" in Indiana within the meaning of the General Corporation Act, without registering with the Secretary of State and fulfilling the other requisites outlined by the act.

The question of whether a foreign corporation is doing business in this state to such a degree that it violates the law by not complying with the registration provisions of the Indiana General Corporation Statute is one which depends upon the facts in each individual case.
I have written an opinion which contains a detailed discussion of what the phrase, “doing business” or “transacting business” means within the terms of the statute. 1955 O. A. G., page 133, No. 36. Suffice it to say here that an isolated transaction does not bring a foreign corporation within the provisions of the act.


The statute relative to the duties of the Division of Public Works and Supply provides that contracts shall be let to the “lowest and best bidder.” Acts 1947, Ch. 279, Sec. 11, p. 1138, as found in Burns’ (1951 Repl.), Section 60-1811.

This provision imposes upon you not only the duty of ascertaining who is the lowest bidder, but also who is the best bidder.

Boseker v. Wabash County Comrs. (1882), 88 Ind. 267.

Among the many factors which you may consider in the exercise of this discretion are the character, moral worth and integrity of the bidder, and his ability to fulfill in letter and spirit the contract made with him. 1953 O. A. G., page 109, No. 24, and cases cited therein.

As a matter of policy, it would be improper for you to contract with foreign corporations which are doing business in Indiana in violation of the Indiana Corporation Act. Since it is the duty of the Attorney General to bring an action enjoining foreign corporations from transacting business in violation of the act, it is clear that such corporations are not competent to perform and, therefore, could not properly contract with the State of Indiana.

The above is true even though there is no statute in Indiana which requires that your department do business only with Indiana corporations and there is no statute which specifically voids contracts made with foreign corporations who are doing business in this state without complying with our law. A contract with a foreign corporation that is doing business in this state within the meaning of our General Corporation Act.
and has failed to register as required by that act is a valid contract so far as the state is concerned, but not enforceable in our courts by the corporation.

Farmers' Mutual Hail Ins. Co. of Iowa v. Gorsuch, supra.

Therefore, in summary, it would be improper for the Division of Public Works and Supply to contract with out of state corporations who are doing business in Indiana in violation of the Indiana General Corporation Act.

OFFICIAL OPINION NO. 3
January 15, 1958

Mr. George S. Diener
Speaker, House of Representatives
Hume Mansur Building
Indianapolis, Indiana

Dear Mr. Diener:

I have received and considered your letter of November 14, 1957, which reads as follows:

“I have been asked several times about an Act passed by the 1957 General Assembly that may cause confusion and I would certainly appreciate an opinion from your office.

“Chapter 226 of the Acts of 1935 repeals a 1905 Act giving towns the right to issue local liquor licenses. In Chapter 258 of the 1957 Acts an amendment to the 1905 Act was passed to permit towns to build sewers four miles beyond the corporate limits. This latter Act repeated in the main the right to issue liquor licenses contained in the 1905 Act.

“It seems that there are a few impoverished towns that could be aided by the small additional revenue that could be derived from this local license fee. The question is, does the 1957 Act authorize this or does the 1935 Act still prevail.”