

Also, in 1944 Ind. OAG, this office held that where there was a conflict in an election statute on the question of whether the names of candidates for United States Senator should appear on the national ballot or state ballot, the form of the ballot as set forth in the statute would control.

Moreover, in the statute in question it is significant that the Legislature has specifically provided just before setting forth the table in question that "as provided in this section, the following schedule *shall prevail*:". (Our emphasis). This appears to indicate the legislative intention that if there is any conflict in the statute in question as to the amounts to be paid to teachers, the amounts set forth in the schedule or table shall prevail.

Based upon the foregoing reasons and authorities, it is my opinion that the figures in the salary table in the foregoing statute are controlling in the computation of the minimum salaries of teachers.

OFFICIAL OPINION NO. 9

March 25, 1947.

Hon. Thomas E. Bath,
Secretary of State,
State House,
Indianapolis, Indiana.

Dear Mr. Bath:

I have your letter of February 18, 1947 which reads as follows:

"There has been submitted to me for filing a notice of appointment of resident agent by a foreign corporation which is in the usual form. There is, however, appended to the notice a separate appendage which recites as follows:

"TO WHOM IT MAY CONCERN:

"For whatever effect it may have, The Oliver Corporation declares that, by complying with the provisions of the Indiana General Corporation Act respecting the designation of an agent for the service

of process, it does not consent to be sued in any United States District Court located in Indiana on any cause of action arising outside of Indiana which is not the result of an obligation or liability growing out of any business done by The Oliver Corporation in Indiana, and declares that it does not waive its privilege to object to the venue in such suits.

"In view of Section 61 of the Acts of 1929, Chapter 215, will you please advise as to whether or not this appendage is at variance with said Act and whether or not I should permit the filing of said notice with the appendage.

"I respectfully request an official opinion in this respect. * * *"

Section 61 of The General Corporation Act of 1929 concerns the appointment of a resident agent. The section reads as follows:

"Resident Agent. Each foreign corporation admitted to do business in this state, shall keep constantly on file in the office of the secretary of state an affidavit of its president or a vice-president and its secretary or an assistant secretary, setting forth the location of its principal business office in this state, and the name of some person who may be found at such office as its agent or representative on whom service of legal process may be had in all suits and actions that may be commenced against it. For the purposes of this section the application for admission filed by a foreign corporation shall be deemed to be such an affidavit. As often as such corporation shall change the location of its principal business office in this state or change its agent for service of legal process or such agent shall be removed by death, resignation or incapacity, a new affidavit shall be immediately filed by such officers with the secretary of state."

This statute neither directly nor by inference grants the Secretary of State any discretionary duty in connection with

the form or content of the filing by a foreign corporation of the appointment of a resident agent. In accepting such filings, the Secretary of State is performing a "ministerial act". A "ministerial act" is an act, offer or power that is to be performed or exercised uniformly on a given state of facts in a prescribed manner in obedience to law or the mandate of legal authority, without dependence upon the exercise of judgment as to propriety of so doing.

Flournoy v. City of Jeffersonville, 17 Ind. 169
at 174;

Pennington v. Streight, 54 Ind. 376;

Metz v. Maddox, 105 N. Y. S. 702, 712.

Section 61 as quoted makes no provision for any compromise of the terms upon which a foreign corporation may be admitted to do business in the state. The language of the statute is clear and unambiguous. It has long been a recognized principle that the legislature of a state may impose conditions upon a foreign corporation seeking to do business within the state. These conditions are limited only by the state and federal constitutions. The foreign corporation must accept the conditions as the price of admission. See

244, 245, 246, 247 American Jurisprudence vol. 23

49 A. L. R. 735

24 A. L. R. 298

57 A. L. R. 84

When the right to do a thing depends upon legislative authority and the legislature has failed to authorize it, or has forbidden it, no amount of acquiescence or consent or approval of the doing of it by a ministerial officer can create a right to do the thing which is unauthorized or forbidden. An estoppel against the state cannot arise out of the unauthorized acts of state officers.

Department of Insurance et al. v. Church
Members Relief Association (1940), 217 Ind.
58;

Platter v. Board of Commissioners (1885), 103
Ind. 360;

- Sandy v. Board of Commissioners (1909), 171
Ind. 674;
Ness v. Board of Commissioners (1912), 178
Ind. 221;
19 American Jurisprudence, 166, Page 818.

The quoted statute is unambiguous and in complying with its provisions, the Secretary of State has no authority to read anything into the statute which is not there or read anything out of it which is there.

- Hord v. State, 1907, 167 Ind. 622;
State v. Mutual Life Insurance Co., 1910, 175
Ind. 59;
Department of Insurance v. Church Members
Relief Assoc. *supra*.

I can find no authority which would permit the Secretary of State to accept for filing "notice of appointment of resident agent by foreign corporation" unless such notice complies with our statutes. Any appendage at variance with our statutes would, of course, be void. The particular appendage described in your letter is subject to more than one interpretation. It would seem to be an attempt to modify that provision of our statute requiring "* * * on whom service of legal process may be had in all suits or actions that may be commenced against it. * * *" For this there is no statutory authority.

Should an action be brought against The Oliver Corporation in a U. S. District Court located in Indiana upon any cause of action arising outside of Indiana, such not being the result of an obligation or liability going out of any business done by the corporation in Indiana, The Oliver Corporation could raise the question of jurisdiction by a motion to dismiss for lack of venue.

- Knobloch v. M. W. Kellogg Co., 154 Federal
(2d) 45;
Stephen v. Richman and Samuels, 118 Federal
(2d) 1011.

It is my opinion a foreign corporation must comply literally with the terms of our statutes on the subject in order

to be legally admitted to do business in this state. In accepting papers for filing in connection with such admittance, it is my opinion the Secretary of State is not required to file any paper for which there is no statutory authorization.

OFFICIAL OPINION NO. 10

March 27, 1947.

Hon. C. E. Ruston, State Examiner,
State Board of Accounts,
State House,
Indianapolis, Indiana.

Dear Mr. Ruston:

I have your request for an opinion on the following questions:

“(1) Is the State of Indiana liable for costs in a state highway condemnation proceeding?”

“(2) Are clerk’s service fees in a venued cause, or appraiser’s fees and witness fees considered as taxable items of cost, or are they considered as personal fees for services rendered?”

“(3) If judgment is rendered against the State, and such fees are considered as personal fees for services rendered, is the State liable for the payment of such fees?”

“(4) Is the State liable for interest on the full amount of the judgment from the date of judgment to the date of payment, or

“(5) Is the State only liable for the difference between the tender and the total judgment?”

The first question has been passed upon by two Attorneys General of the State. The first opinion was rendered by Hon. Arthur L. Gilliom on July 2, 1925, and the second by Hon. Philip Lutz on January 19, 1933. In each of these opinions it was held that the State, in condemnation proceedings, is not liable for ordinary court costs, but that it is