

more than half a century the legislature has maintained a consistent and definite scheme or plan for that purpose. Under these statutes the entrance of foreign fire insurance companies into the state has been conditioned upon their compliance with certain regulatory and precautionary conditions."

State, ex rel., v. Continental Insurance Company,
67 Ind. App. 536.

This case held constitutional the statute requiring foreign insurance companies to report to the Auditor of State the gross amount of all receipts received in the State on account of insurance premiums each six months and requiring them to pay to the treasury of the State the sum of three dollars on each one hundred dollars of such receipts. The above authority holds that such a program is within the legislative power of the State.

Since this Act applies to all companies duly licensed to transact business within the State and since it contains the further provision that upon failure to comply with the provision quoted with reference to the payments to the State, their license to do business in Indiana may be revoked, it is my opinion that it is constitutionally right for your department to collect from both foreign and domestic companies, and your second question, therefore, should also be answered in the affirmative.

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Foreign corporations, right to act as trustee under wills as to property located in Indiana.

February 25, 1937.

Department of Financial Institutions,
Indianapolis, Indiana.

Gentlemen:

Your letter of February 24, 1937, submits the question as to whether or not the Bank of Manhattan Company, a New York corporation, may act as trustee for property belonging to a citizen of New York State, which property consists of an office building located in the city of Fort Wayne, Indiana, on which there is a lease expiring in 1948, without having first

qualified and been authorized to do business under the provisions of part 7, article 1 of the Financial Institutions Act.

Section 324 of the above entitled Act contains this provision:

“Any bank, trust company or building and loan association organized under the laws of any other state, hereinafter referred to as a corporation or foreign corporation, shall, before transacting business in this State, procure a certificate of admission to this State from the Department and the Secretary of State in the manner hereinafter provided.”

The question therefore presented is whether or not the Bank of Manhattan Company, as trustee, in collecting the rents and profits from the real estate located in Fort Wayne, is engaged in “transacting business in this State,” within the meaning of the statute requiring them to first procure a certificate of admission. The Act does not attempt to define what is meant by “transacting business.” The authorities generally hold that such a question is one of fact and, therefore, ordinarily a matter of judicial determination.

In Volume 12, Ruling Case Law, on page 69, we find this statement:

“It seems to be the consensus of opinion that a corporation, to come within the purview of most statutes prescribing conditions on the right of foreign corporations to do business within the State, must transact therein some substantial part of its ordinary business, which must be continuous in the sense that it is distinguished from merely casual or occasional transactions, and it must be of such a character as will give rise to some form of legal obligations. Hence it may be laid down as a general rule that the action of a foreign corporation in entering into one contract or transacting an isolated business act in the State does not ordinarily constitute “the carrying on or doing of business therein.”

This rule is again announced by our Appellate Court of Indiana in the following language:

“The courts as a rule have held that, where a foreign corporation enters into a single contract, or en-

gages in some other isolated business act within a particular state, with no intention to repeat the same therein, or make such state a basis for the conduct of any part of its corporate business, such corporation cannot be said to be "doing business" or "transacting business" within such state, within the meaning of the usual statutory provisions regulating the transaction of business by foreign corporations."

In view of the fact that apparently the individual 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 shall be guilty of a misdemeanor, as provided in section 351, subsection "C" of the Act, the question of what acts will necessarily be required of the trustee in operating under the lease, covering a six-story business building in Fort Wayne, is conjectural, but nevertheless important in the decision of this question. If no act is to be done by the trustee except to receive the rents from this property in their New York office, then apparently the trustee would not be required to obtain admission to do business in the State of Indiana.

If, on the other hand, taxes are to be paid, repairs made on the building, contracts made for many items of service in connection with the upkeep and operation of said building over a period of ten years, then it would seem that the corporation is thereby transacting within the State of Indiana some substantial part of its ordinary business, continuous as distinguished from merely casual.

As was said in the *Re Wellings Estate*, 221 Pac. 628:

"When a foreign corporation enters a state other than that of its creation for the purpose of doing some substantial part of its ordinary business or of exercising some of the functions for which it was created, it is transacting business within that state. The Michigan Trust Company was created and organized to conduct and carry on a trust business. One of the main purposes for which it was formed was to act as Executor and Trustee under appointment, made in last wills and testaments. It has full power to invest and re-invest any monies which may come to it as a Trustee. When a foreign corporation enters a state, under

such powers, receives by devise and asserts ownership of land devised to it and assumes to carry out the terms of the trust, such foreign company is doing business in the state, within the meaning of the statute."

It has also been held that a foreign corporation which is a lessee of a building and is engaged in subletting it for profit, is doing business within the state where the building is located.

Cassidy's Ltd. v. Rowen, 163 N. Y. Supplement 1079.

In view of the fact that section 351, subsection "A" of the Financial Institutions Act forbids a foreign corporation from maintaining any suit in any court upon any demand or contract connected with the business in this State, it is my opinion that the Bank of Manhattan Company should first obtain admission from the State of Indiana to discharge the duties of this trust before proceeding in this matter.

HIGHWAY COMMISSION, STATE: Has power under Acts of Legislature to pass rules and regulations for proper protection and control of State highways.

February 26, 1937.

Hon. James D. Adams,
Chairman State Highway Commission,
State House,
Indianapolis, Indiana.

Dear Sir:

Receipt is acknowledged of your request of February 25, 1937, which reads as follows:

"The State Highway Commission requests an official opinion and advice on the following proposition.

"State Highway 21 is improved with a non-rigid type of surface. On account of the soft condition of this highway caused by climatic condition, this highway between Muncie and Marion was posted, forbidding traffic thereon with more than a three-gross-ton load. One William W. Gibson was arrested for violating this order. He had a load on his truck weighing 11,000