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OFFICIAL OPINION NO. 8

March 17, 1961

Honorable Charles O. Hendricks
Secretary of State
201 State House
Indianapolis 4, Indiana

Dear Mr. Hendricks:

This is in reply to your request for an Official Opinion, which letter of request reads as follows:

“The Secretary of State is requesting an official opinion regarding the payment of fees by Foreign Corporations doing business in the State of Indiana, specifically, if the corporation registers to do business in the State of Indiana on a certain number of shares and then their shares in the State drop to a lower figure and subsequently increases again.

“Is the two cents a share to be figured on the increase, if the increase does not exceed the original number of which the corporation qualified?

“Also, if a corporation doing business in the State of Indiana on a certain number of shares would split their shares, which would automatically increase the number of shares, would the corporation be required to pay the two cents per share on the increased number due to the split?”

By the Indiana General Corporation Act, the same being Acts of 1929, Ch. 215, Sec. 59, as found in Burns' (1948 Repl.), Section 25-304, it is required that a foreign corporation desiring to be admitted to do business in this state present to the Secretary of State an application to do business “accompanied by the fees prescribed by law.”

The present law prescribing fees to be paid by corporations is the Indiana General Corporation Fee Act of 1957, the same being Acts of 1957, Ch. 230, Sec. 1, as found in Burns' (1959 Supp.), Section 25-601, and Sec. 2, as amended, as found in Burns' (1959 Supp.), Section 25-602, which Act reads in part as follows:

[25-601] "This act may be cited as 'The Indiana General Corporation Fee Act of 1957.' As used in this act:

* * *

"(e) The term 'capital stock' shall mean the *aggregate number of shares into which the capital* of either a domestic corporation for profit or a foreign corporation for profit *is divided*, whether such shares are declared to have a par value or are declared to have no par value."

[25-602] "The secretary of state shall charge and collect, for the benefit of the state, to be paid into the general fund of the state of Indiana, the following fees to wit:

"(a) For filing with the secretary of state the articles of incorporation or a certified copy or duplicate original thereof of any *domestic corporation* for profit with a capital stock of one thousand [1,000] shares or less, whether par value or no par value, twenty dollars [\$20.00]. If the capital stock of any domestic corporation for profit is over one thousand [1,000] shares, whether par value or no par value two cents [2¢] per share on the first twenty thousand [20,000] shares, and two cents [2¢] per share on all additional shares.

"(b) For filing with the secretary of state a certificate of increase of capital stock, whether par value or no par value, of a *domestic corporation* for profit, two cents [2¢] per share on the first twenty thousand [20,000] shares and two cents [2¢] per share on all additional shares where the increase is more than one thousand [1,000] shares, and where the increase, whether par value or no par value, is one thousand [1,000] shares or less, fifteen dollars [\$15.00] minimum fee.

"(c) For filing with the secretary of state the application of a *foreign corporation* for profit with a proportion of its issued and outstanding capital stock, represented in this state, of one thousand [1,000] shares or less, whether par value or no par value, twenty dollars [\$20.00]. If the proportion of its issued and outstand-

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ing capital stock, represented in this state is over one thousand [1,000] shares, whether par value or no par value, two cents [2¢] per share on the first twenty thousand [20,000] shares and two cents [2¢] per share on all additional shares.

“(d) For *increases in proportion of its issued and outstanding capital stock*, represented in this state, of one thousand [1,000] shares or less, whether par value or no par value, of *foreign corporations* for profit, twenty dollars [\$20.00] *to be computed on the basis of annual reports* as required by law. For increases in proportion of its issued and outstanding capital stock, represented in this state, where the increase is one thousand [1,000] shares or over, of a foreign corporation for profit two cents [2¢] per share on the first twenty thousand [20,000] shares and two cents [2¢] per share on all additional shares, *to be computed on the basis of annual reports* as required by law.” (Our emphasis)

1939 Opinions of the Attorney General, page 274, concerns a situation closely related to that of your second question. There, a foreign corporation had paid the fee required by Burns' 25-602 (c), *supra*, on one hundred per cent [100%] of its capital stock but, due to issuance of additional stock by the corporation, the total number of shares had increased, although such number could not effect an increase in the percentage of its shares represented in this state. The question was whether the Secretary of State should have assessed the fee under Burns' 25-602 (d), *supra*, there being an increased number of shares but not an increase in proportion of shares represented in Indiana. (The language of Burns' 25-602 (c) and (d), *supra*, was then substantially the same as now, numbers therein now being doubled: for example, two cents rather than one cent, etc.)

After first referring to the definition of “capital stock” in Section 1 of the Indiana Corporation Fee Act, [being Acts of 1929, Ch. 219, as then amended by the Acts of 1935, Ch. 192, and re-enacted verbatim by the General Corporation Fee Act of 1957 (Burns' 25-601 (e), *supra*)] and substituting the definitive phrase “aggregate number of shares into which the

capital is divided” wherever the words “capital stock” appear in Burns’ 25-602(c) and (d), *supra*, and after referring secondly to a case decided under prior law, when the basis of computation was clearly the monetary value of the business, the affirmative conclusion stated on pages 280 and 281 of the 1939 Opinion was:

*“It is evident that the terms ‘proportion’ and ‘increases in proportion’ are the terms which give rise to the dispute, it being insisted by the corporation that since it came into the State upon the representation that its entire number of shares would be used in Indiana, that there could be no increase in proportion notwithstanding the number of shares so used be many times multiplied. * * **

*“In my opinion, when the language is properly construed, whatever results in an increased number of shares used in the State of Indiana requires an additional admission fee on the basis set out in the statute; and whether that result is obtained by an increase in the relative amount of assets and business done within the State or by an increase in the total number of shares makes no difference. * * * After all, it is the number of shares used in the State of Indiana which is the basis of the fee.” (Our emphasis)*

In my opinion, 1939 O. A. G., page 274 continues to provide the answer to your second question, that it is the *number* of shares which is the basis for the fee, not only because it has been impliedly concurred in through many legislative sessions, but because legislative re-enactment, by the Indiana General Corporation Fee Act of 1957, of controlling language of the statute there construed, (together with other changes regarding matters not particularly affecting construction of such language) negatives any presumption, by rule of statutory construction, of any change in the original meaning of such re-enacted provisions.

State v. Kates (1897), 149 Ind. 46, 48, 48 N. E. 365;

Huff v. Fetch (1923), 194 Ind. 570, 577, 143 N. E. 705;

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Thompson *et al.* v. Mossburg *et al.* (1923), 193 Ind. 566, 575, 141 N. E. 241.

Therefore, a foreign corporation is required to pay the statutory fee of two cents [2¢] per share on the increased number of shares, even though occasioned by splitting the original shares.

The answer to your first question is expressly provided in Burns' 25-602(d), *supra*, by consistent reference to computation "on the basis of annual reports" and omission of any reference to the original certificate of admission as the basis for computing fees for increases "in proportion to its issued and outstanding capital stock"—the precise words necessitating construction and leading to the conclusion stated in 1939 O. A. G., page 274, at page 281, *supra*. While an Opinion of the Attorney General and the practical construction by administrators is not binding on courts, such construction is entitled to respect and weight when the same has been acquiesced in by the Legislature for a number of sessions.

Zoercher v. Indiana Associated Telephone Corp. (1937), 211 Ind. 447, 456, 7 N. E. (2d) 282;

County Department of Public Welfare *et al.* v. Scott's Estate (1944), 115 Ind. App. 28, 31, 55 N. E. (2d) 337.

Therefore, it is my opinion that the number of shares on which the increase fee of foreign corporations must be paid is to be figured on any increase in shares of the foreign corporation over the number shown in the last annual report, irrespective of the original number of shares qualified by the corporation.

It should be noted that such conclusion is in line with that reached in 1944 O. A. G., page 249, construing parts of the Indiana Corporation Fee Act identical with Burns' 25-602(a) and (b), *supra*, relating only to domestic corporations, in answering a question similar to the first one here propounded, at which time, with less express authority than in Burns' 25-602(d), *supra*, it was determined that domestic corporations should have increase fees computed "upon the basis of deducting the number of shares *authorized immediately prior*

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*to filing the certificate from the number of shares authorized by the certificate of increase * * *.*" (Our emphasis)

In summary and conclusion, it is my opinion that the fee charged foreign corporations for increasing the number of shares of capital stock represented in this state is to be computed on the numerical difference between shares shown by the last two annual reports, irrespective of the number of shares on which a fee was paid when the corporation was first admitted to do business in this state and irrespective of the fact that such increase may be due wholly to splitting shares on which a former fee was paid.

OFFICIAL OPINION NO. 9

March 23, 1961

Mr. Eugene E. Stegall
Secretary-Treasurer
State Board of Embalmers and Funeral Directors
Box 81
Richmond, Indiana

Dear Mr. Stegall:

Your letter of February 10, 1961, has been received and reads as follows:

"This Board respectfully requests an Official Opinion regarding the following question:

"Indiana Statutes provide for the disposition of the remains of a deceased person to the Anatomical Board if the remains are not claimed by any relative or legal representative within a reasonable length of time, if the deceased person was supported at public expense or was in that class commonly known as tramps.

"What disposition should be made and what person or agency should direct the disposition of the unclaimed remains of a deceased person when funds are available in the name of the deceased person which could be used for disposition of the remains and the deceased person was self-supported?"