

CIRCULAR NO. 8.

(Revised to May 1, 1903.)

## HOW FOREIGN CORPORATIONS MAY BE AUTHORIZED TO HOLD PROPERTY AND TRANSACT BUSINESS IN WEST VIRGINIA.

The law providing how Foreign Corporations may hold property and transact business in the State of West Virginia is contained in chapter 16 of the Corporation Laws of West Virginia, and is the same as section 30 of chapter 54 of the Code of West Virginia, as amended by section 35 of the Acts of 1901, and is as follows:

### *The Law.*

Any corporation duly incorporated by the laws of any other state or territory of the United States or District of Columbia, or of any foreign country, may, unless it be otherwise expressly provided, hold property and transact business in this state, upon complying with the provisions of this section, and not otherwise. Such corporation so complying shall have the rights, powers and privileges, and be subject to the same regulations, restrictions and liabilities, that are conferred and imposed by this and the fifty-second, the fifty-third and the thirty-second chapters of this code, as amended by this act, on corporations chartered under the laws of this state.\* Every such corporation shall file with the Secretary of State a copy of its articles of association or certificate of incorporation. The Secretary of State shall issue to every such corporation complying with the provisions of this section a certificate of the fact of its having done so, which certificate shall be filed and recorded in the office of the clerk of the county court of the county, or one of the counties, in which its business is conducted. Such corporation shall also file in the said clerk's office, a copy of its charter, which shall be recorded therein. Every railroad corporation doing business in this state under the provisions of this section, or under charters granted or laws passed by the State of Virginia, or this state, is hereby declared to be, as to its works, property, operations, transactions and business in this state, a domestic corporation, and shall be so held and treated in all suits and legal proceedings which may be commenced or carried on by or against any such railroad corporation, as well as in all other matters relating to such corporations.† No railroad

\*All of chaps. 52, 53, and 32 of the code that apply to ordinary private business corporations, will be found in chaps. 1, 2, and 19, respectively, of Corporation Laws.

† No corporation of one state can be made a domestic corporation of another by merely declaring that it shall be such. So much of the above section 30 of chap. 54 of the Code as it stood before the amendment of 1901, as required a foreign corporation to file an agreement that in all suits it shall be treated as a domestic corporation, is void so far as it attempts to prohibit the right of removal by it of suits against it to the federal courts. *Rece vs. N. N. & M. V. Co.*, 32 W. Va. 164 (9 S. E. Rep. 212).

or other corporation which has a charter or any corporate authority from any other state, shall do business in this state as the lessee of the works, property or franchises of any other corporation or person, or otherwise, or bring or maintain any action, suit or proceeding in this state, until it shall, in addition to what is hereinbefore required, file in the office of the Secretary of State, a writing, duly executed under its corporate seal, accepting the provisions of this section and agreeing to be governed thereby, and its failure so to do may be pleaded in abatement of any such action, suit or proceeding; but nothing herein contained shall be construed to lessen the liability of any corporation which may not have complied with the requirements of this section, upon any contract or for any wrong.

Every such corporation which shall do business in this state, without having complied with the provisions of this section, shall be guilty of a misdemeanor; and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars for each month its failure so to comply shall continue. Prosecutions under this section shall be in the county in which the seat of government is. For every certificate issued under this section the Secretary of State shall be paid by the corporation a fee of five dollars.†

† To which should be added \$1, the tax on state seal impressed on the certificate, making total of \$6 for the certificate.

### *The Steps to be Taken.*

It will be seen by the foregoing that such foreign corporation must take the following steps:

1. File a certified copy of its charter, or of its articles of association, with the Secretary of State of West Virginia. This copy may be certified as correct by the Secretary of State or other officer who issued the original, of the state by which the corporation was incorporated; or it may be so certified by the president of the corporation, under his hand and the seal of the corporation, and attested by the secretary of the corporation; and such certificate may be in this form:

I, ———, president of the ——— Company, a corporation created and organized under the laws of the state of ———, do hereby certify to the Secretary of State of the State of West Virginia, that the foregoing and annexed is a full, true and correct copy of the certificate of incorporation [or articles of association, as the case may be], with all amendments and additions thereto, of the said corporation.

Given under my hand and the seal of said corporation, this ——— day of ———.

(Seal) ——— President of ——— Company.  
Correct—Attest: ——— Secretary of ——— Company.

2. A copy of the charter, or of the articles of association, certified as aforesaid, must also be filed and recorded in the office of the clerk of the county court of the county, or one of the counties, in West Virginia in which the corporation conducts business. The proper county in which to file and record this copy would seem to be that county in which the corporation may have a branch office in this state, or in which it makes its headquarters in this state, or in some county in which it does, or will do, business.

It will be seen that *two* certified copies of the charter, or of the articles of association, are required—one to file in the Secretary of State's office and one to file and record in the county clerk's office.

3. The corporation must also file in the Secretary of State's office a writing of acceptance of section 30 of chapter 54 of the

code of West Virginia, before he is authorized to issue his certificate. Such certificate of acceptance may be in this form:

I, \_\_\_\_\_, president of the \_\_\_\_\_ Company, a corporation created and organized under the laws of the state of \_\_\_\_\_, hereby certify to the Secretary of State of the State of West Virginia, that, at a meeting of the board of directors [or other governing body of the corporation] of said corporation, regularly held at the office of the corporation on the \_\_\_\_\_ day of \_\_\_\_\_, the following resolution was adopted:

"Resolved, by the board of directors of the \_\_\_\_\_ Company, a corporation created and organized under the laws of the state of \_\_\_\_\_, That, whereas, said corporation desires authority to hold property and transact business in the State of West Virginia, the said corporation hereby accepts the provisions of section thirty of chapter fifty-four of the Code of West Virginia and agrees to be governed thereby."

Given under my hand and the seal of said corporation, this \_\_\_\_\_ day of \_\_\_\_\_.

(Seal) \_\_\_\_\_ President of \_\_\_\_\_ Company.

4. The corporation must also appoint an attorney of record, usually called "Statutory Attorney." See Circular No. 10. This statutory attorney should be a resident of some county in the state in which the foreign corporation will do business. For the reasons stated in Circular No. 10, it is better to appoint some practicing attorney of this state such statutory attorney, or some other person who has a fixed and permanent residence and place of business in the county.

5. On receipt of the certified copy of charter, the certificate of acceptance of the law, and the power of attorney, the Secretary of State will issue a *Certificate of Authority* to the corporation, which will be evidence of its compliance with the law and of its authority to hold property and transact business in the State of West Virginia. This certificate of authority must be filed and recorded in the said county clerk's office of the county in which the certified copy of the charter is filed and recorded, as referred to in section 2, above. As the corporation must *file and record* in the county clerk's office the certificate of authority of the Secretary of State, and as each corporation will doubtless want one also in its own possession, it would seem that *two* such certificates of the Secretary of State would be needed.

#### The Costs.

The costs of the proceedings in the Secretary of State's office are as follows:

For two certificates of authority, including the tax on state seal.....	\$12.00
For filing and recording the certificate of acceptance.....	1.00
	<hr/>
	\$13.00

The other costs are: Recording the copy of charter and the certificate of authority in the county clerk's office, \$2.50 for charter and \$1.00 for the certificate, making \$3.50. The cost in connection with the power of attorney to the statutory attorney: Recording in the county clerk's office \$1.25; filing and recording in the Secretary of State's office \$2.50; for certificate of Secretary of State attesting compliance with the law in respect to appointment, etc., of statutory attorney, \$2.50; making a total of \$6.25. If the corporation desires me to act

as its statutory attorney I will do so in my capacity as attorney at law, and my charge for such service is \$10 per year, payable in advance. In the event that the corporation desires me to act as such attorney the whole of the remittance can be made to me at one time, and I will see to the recording in the county clerk's office, etc. In that case the amount to be remitted would be \$32.75.

### *The Annual License Tax.*

The law in reference to the payment of annual license tax by foreign corporations is section 5 of chap. 19 of Corp. Laws, being sec. 88 of chap. 32 of the Code, as amended by chap. 35 of Acts of 1901 and by chap. 3 of Acts of 1903:

Every foreign corporation holding property or doing business in this state, shall make report to the auditor annually in the month of February, in which report shall be set out:

I. The name of such corporation, the name of the state or country by which incorporated, the date of incorporation, the date of the certificate of the Secretary of State authorizing it to do business in this state, the place of its principal office, the names and postoffice addresses of its president, secretary and of its officer (if any) charged with the duty of making returns of its property for taxation, and the name and postoffice address of its attorney of record in this state;

II. The number of shares of its authorized capital stock, and the par value of each share;

III. The value of the property owned and used by such corporation within this state, where situate, of what it consists, and the number of acres of land it holds in this state; and the value of its property owned and used without this state; and

IV. The proportion of its capital stock which is represented by property owned and used in the state of West Virginia; which report shall be verified by the affidavit of the president, secretary or other executive officer of such corporation. It shall be the duty of the auditor to lay such report before the board of public works, and the duty of the board to assess and fix its license tax according to the proportion of its capital stock which is represented by its property owned and used in this state, according to the rates prescribed in section eighty-six [sec. 3 chap 19 Corp. Laws] of this chapter if the assessed value of its property located in this state amounts to five thousand dollars; but if the assessed value of such property be less than five thousand dollars, the assessment shall be according to the rates prescribed in section eighty-seven [sec. 4 chap. 19 Corp. Laws] of this chapter; provided, that no such corporation shall pay an annual license tax of less than one hundred dollars.

If such corporation holds more than ten thousand acres of land in this state, and has not paid the tax thereon as fixed by section 6 of chapter 54 of the code [sec. 6 chap. 3 Corp. Laws], it shall pay such tax, or the remainder of such tax, in the manner hereinafter prescribed. If such corporation thereafter desires to increase such number of acres it shall proceed as prescribed in section 21 of chapter 54 of the code [sec. 21 chap. 2 Corp. Laws].

The board of public works may in any case require such additional information as it may deem necessary to enable it to assess and fix the just amount of license tax of such corporation. It shall be the duty of the secretary of state to certify to the auditor the amount of license tax so assessed and fixed by the board on any such corporation, and the duty of the auditor to notify every such corporation of such amount, and it shall be the duty of the corporation to pay the same into the treasury of the state within thirty days thereafter, and if it fail to do so it shall be liable to the penalties prescribed in section ninety [sec. 7 chap. 19 Corp. Laws] of this chapter.

It will be seen from the foregoing that no remittance is to be made to the Secretary of State for the license tax, as that is payable to the Auditor, who furnishes blank forms for the report required. In cases of foreign corporations like building and loan associations that have no definite authorized capital stock, the Attorney General on March 16, 1901, made the following decision;

A building and loan association is a peculiar corporation, markedly different from the ordinary joint stock company. It is an association of persons who take shares under contract, (mis-named capital stock,) and pay for them in small sums called "dues" from time to time. What is the capital stock or capital of building and loan associations? is the material question to be decided here. Endlich on Building and Loan Associations, sec. 495, defines the capital stock to be "the fund which has accrued from monthly payments on shares, from premiums and interest on loans and from fines." In *Archer vs. B. B. & L. Asso'n*, 45 W. Va. 42, our Supreme Court of Appeals in substance declares: The capital of building and loan associations consists of the dues paid in, the premiums, interest, fines and other charges, collected by the association from its shareholders, which after the payment of the necessary contingent expenses, constitutes its capital or social fund. This definition is supported by the following cases: *Ohio Valley B. & L. Asso'n vs. Cabell Co. Court*, 42 W. Va. 818; *Washington B. & L. Asso'n vs. Creveling*, 39 N. J. L., 465; same affirmed by the Supreme Court of New Jersey, 40 N. J. L., 192.

I deem these authorities decisive of the question as to what the capital or capital stock of building and loan associations consists. It therefore follows that the tax on foreign building and loan associations should be assessed upon the earnings of the several shares of stock sold in this state.

In order to place a proper assessment upon foreign building and loan associations, it is necessary for them to include in their report to the auditor, in addition to the facts specified in section 88 of said act, the following: The amount of dues, premiums, interest, fines and other charges earned by and collected from the shares of stock sold in this state; the amount of dues, premiums, fines and other charges earned by and collected from the shares of stock sold to persons out of this state, and the proportion that the sum earned by the shares sold in this state bears to the sum earned by the shares sold out of this state. But in no case can there be a less tax assessed against any such corporation than one hundred dollars.

The foregoing decision of the attorney general will apply to other corporations not having capital stock.

It should be observed however that the minimum license tax for the whole of the license tax year, which begins with May 1st of each year and ends with the following 30th of April, cannot be less than \$100.

It will be seen from the law that a foreign corporation doing business in this state and having therein property of assessed value of not less than \$5,000 will be entitled to the rate of license tax prescribed for resident corporations in sec. 3 of chap. 19 Corp. Laws; but if the assessed value of its property in this state is less than \$5,000 it will be required to pay the rate prescribed for non-resident corporations in sec. 4 of chap. 19 Corp. Laws.

*Note.*—The rates of license tax for resident corporations are tabulated in convenient form in Circular No. 2; the rates for non-resident corporations are likewise tabulated in Circular No. 3, which circulars will be found in the appendix to Corp. Laws.

### *The Land-Privilege Tax.*

If the foreign corporation desires to hold more than 10,000 acres of land in the state of West Virginia it must be authorized to do so by a separate certificate of the Secretary of State, and pay 5 cents per acre for each acre in excess of 10,000 acres. This land-privilege tax is payable but once, not yearly. See clause vii of sec. 6 chap. 5 Corp. Laws.

### *Other Taxes.*

The foreign corporation is required to pay taxes on its real estate and personal property situated in this state just as persons and domestic corporations are required to pay; if it have no such property in this state it will not be required to pay taxes thereon in this state.

### *Reports to be Made.*

In addition to the report required to be made yearly to the Auditor as set out under the head of "The Annual License Tax" above, the corporation is required to make report to the Secretary of State. See sec. 46 of chap. 2 Corp. Laws, and Form No. 15 in the appendix of Corp. Laws. Blank forms for this report will be furnished by the Secretary of State, and such should always be used.

### *Summary of Things to be Done.*

The things to be done by foreign corporations to comply with the laws of West Virginia are as follows:

1. File with Secretary of State certified copy of charter, certificate of acceptance, and power of attorney.
2. Receive from him certificate of authority.
3. File and record certificate of authority and certified copy of charter with county clerk.
4. Make report to Secretary of State and to Auditor yearly.

### *Construction of Laws.*

What is "holding property and transacting business" in the state is a question frequently asked of this office. The law books are full of decisions on specific cases of this kind. If a foreign corporation desires to hold any property in this state, or to make contracts that will ever likely need to be enforced in this state, it should comply with the laws of the state as herein given. This is the safe thing to do. The mere selling of goods in the state by sample by drummers, or shipping goods into the state by express or other transportation companies, or filling orders received through the mails or through traveling agents, does not come within the definition of holding property or transacting business in the state; It is well established by the decisions that a corporation of one state cannot do business in another state until it has complied with the laws thereof, and on the other hand no state can enact any law interfering with interstate commerce.

*Getting Out of the State.*

Sec. 5 of chap. 19 Corp. Laws (Code, chap. 32, sec. 8, as amended by chap. 3, Acts 1903) provides:

Any foreign corporation desiring no longer to hold property and transact business in this state, may file in the office of the secretary of state a statement signed by its president and sealed with its corporate seal, stating that such corporation no longer desires to hold property and transact business in the state of West Virginia and hereby surrenders to said state the right and authority heretofore granted it to hold property and transact business therein. To such statement there shall be appended the affidavit of the president or of the treasurer, or of some other executive officer of such corporation having charge of its books of account and financial records, that said corporation owes no debt to any citizen of West Virginia, and that it owes no debt or other financial obligation to the state (or that it owes only so much, stating the amount, and hereby tenders payment of the same). Such statement and certificate shall be laid by the secretary of state before the board of public works; and, when approved by the board, he shall file the same in his office, and make proper note thereof in the indexes of corporations kept in his office, and report to the auditor in his monthly report required by section 92 of chapter 32 of the code, the fact of the filing of such statement and certificate in his office. Nothing herein shall be construed as to relieve any such corporation from any debt, liability or other obligation due from it to the state or to any citizen thereof; but, after the approval of such statement and certificate and the filing thereof as aforesaid, such corporation, if the statements therein made be true and such corporation has complied with the laws of the state and shall thereafter comply with same, shall not be liable for the payment to the state of license tax on its charter.

The certificate and affidavit required above may be in this form:

I,....., President of.....Company, a corporation created and organized under the laws of the State of....., and heretofore authorized to hold property and transact business in West Virginia, hereby certify to the Secretary of State of the State of West Virginia, that said corporation no longer desires to hold property and transact business in the State of West Virginia and hereby surrenders to said State the right and authority heretofore granted it to hold property and transact business therein.

Given under my hand and the seal of said corporation this.....day of....., 190 .

(Seal.)

.....  
President of..... Company.

State of....., County of.....to wit:

I, ....., a Notary Public in and for said State and County, do hereby certify that ....., the (President, Secretary, or Treasurer) of the corporation above named, this day personally appeared before me and made oath that said corporation owes no debt to any citizen of the State of West Virginia, and that it owes no debt or other financial obligation to said State.

Given under my hand and official seal this.....day of....., 190 .

(Seal.)

.....  
Notary Public.

The cost of filing, etc., this certificate is \$1.50. If a certificate of the Secretary of State is desired certifying to the transaction, the cost thereof is \$3.50, making \$5 in all.

WM. M. O. DAWSON,  
Secretary of State.

Charleston, W. Va.

Getting Out of the State

Sec. 5 of chap. 10 Corp. Law (Code Chap. 33, sec. 8, as amended by chap. 8, Act 1903) provides:

An foreign corporation desiring to locate its hold property and transact business in this state may file in the office of the secretary of state a statement signed by its president and verified with his corporate seal, stating that such corporation no longer desires to hold property and transact business in the state of West Virginia and hereby authorizes to said state the president and authority heretofore granted it to hold property and transact business therein. To such statement there shall be appended a affidavit of the president or of the treasurer, or of some other executive officer of such corporation having charge of its books of account and financial records, that said corporation owes no debt to any citizen of West Virginia, and that it owes no debt or other financial obligation to the state or that if it owes no debt, stating the amount, and hereby renders payment of the same. Such statement and certificate shall be filed by the secretary of state before the board of public works; and, when approved by the board, he shall file the same in his office, and make proper note thereof in the docket of corporations kept in his office, and report to the auditor in his monthly report required by section 17 of chapter 15 of the code, the fact of the filing of such statement and certificate in his office. Nothing herein shall be construed as to relieve any such corporation from any debt, liability or other obligation due from it to the state or to any citizen thereof, but after the approval of such statement and certificate and the filing thereof as aforesaid, such corporation, if the statement therein made be true and such corporation has complied with the laws of the state and shall thereafter comply with same, shall not be liable for the payment to the state of license tax on its charter.



The certificate and statement above may be in this form:

I, President of Company, a corporation created and organized under the laws of the State of West Virginia, hereby certify to the Secretary and Treasurer of the State of West Virginia, that said corporation no longer desires to hold property and transact business in the State of West Virginia and hereby authorizes to said State the right and authority heretofore granted it to hold property and transact business therein. Given under my hand and the seal of said corporation this day of 190

President of Company

State of County of to wit: a Notary Public in and for said State and County, do hereby certify that the President, Secretary or Treasurer of the corporation has personally appeared before me and made a full and true statement to me that it owes no debt to any citizen of West Virginia, and that it owes no debt or other financial obligation to said State. Given under my hand and official seal this day of 190

The cost of filing etc., this certificate is \$1.50. If a certificate of the Secretary of State is desired certifying to the transaction, the cost thereof is \$3.50, making \$5 in all.

W. M. O. WILSON, Secretary of State, Charleston, W. Va.