

retary of State authorizes a lesser number of shares for the consolidated corporation than the total number of authorized shares of the constituent corporations even though such authorized shares of the new corporation are in excess of the authorized shares of either of the constituent corporations.

2. In computing the filing fees for merged or consolidated corporations the amount should be determined by applying the rates set forth in Paragraph 2, of Section 176, General Code, to the authorized shares of the consolidated corporation and deducting therefrom the sum arrived at by applying like rates to the sum total of the authorized shares of the constituent corporations so consolidated. Such sum so arrived at is the filing fee in excess of the minimum filing fee of \$25.00.

3. There is no distinction between merged corporations and consolidated corporations, in so far as the filing fees provided under Section 176, General Code, are concerned, whether such corporations continue to exist in the name of one of the constituent corporations or take an entirely new name.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3947.

COST OF RECOUNT—MINIMUM CHARGE \$5.00 A PRECINCT, MAXIMUM \$10.00 A PRECINCT.

SYLLABUS:

1. *The actual cost of a recount, pursuant to Section 4785-162, General Code, must be disregarded when such cost is less than \$5.00, per precinct, such minimum cost being fixed by statute at \$5.00 per precinct.*

2. *When the result of the election is not changed by the recount, the amount to be refunded to a candidate requiring such recount is determined by returning the entire deposit for any precinct in which an error of two percent of the total vote cast concerning an issue or office is found; but in all other precincts in which the error does not amount to two percent of the total of such recount and does not change the result of the election even though the cost is less than \$5.00 per precinct, there should be deducted from the deposit the sum of \$5.00 for each precinct in which a recount is required and the remainder of such excess deposit returned to the candidate.*

COLUMBUS, OHIO, January 13, 1932.

HON. JOHN I. MILLER, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—Your request for opinion is as follows:

“Section 4785-162 reads as follows:

‘Any candidate voted for at a primary or other election, or any group of five or more qualified electors voting at such election, by making an application in writing to the board of elections, shall be entitled to have the votes for any such candidate, or other candidate for the same office,

or any such issue, recounted in any or all precincts, upon the following terms and conditions. Such application must be made not later than the fifth day after the certificate of the official count has been made, and by depositing with the application ten (\$10.00) dollars per precinct, or a bond to be approved by the board, to pay the *actual cost of such recount, but in no case less than five (\$5.00) dollars*, and not to exceed ten (\$10.00) dollars per precinct, for each precinct in which the recount is desired. If the petitioner or petitioners succeed in establishing error sufficient to change the results in any precinct by at least . . . two per cent (2%) of the total vote cast for such office in such precinct, or by two per cent (2%) of the total vote cast for and against such issue in such precinct, then the deposit for such precinct shall be refunded, otherwise, the actual cost of such recount shall be paid into the general fund of the county in which such recount is had, provided however, that the *minimum charge of such recount shall not be less than five dollars (\$5.00) and the maximum more than ten dollars (\$10.00) per precinct*. If sufficient error is established to change the result of the election, regardless of the error found in any precinct, then the deposit made for all precincts shall be refunded.'

On an application by one of the candidates for Mayor in this City, a recount of all of the votes cast in the fourteen precincts of the City of Van Wert, Ohio, was made.

The party requesting the recount deposited \$140.00 with the board of elections as provided in said section.

We are in doubt as to what, if any, of said amount of money should be returned to the party asking for the recount as stated above.

We would like to have the following questions answered by your department:

First: *Is the actual cost of such recount to govern in the matter of determining what amount shall be refunded to the party asking for the recount, provided the same is less than \$5.00 per precinct, or*

Second: *Shall the balance that is to be refunded to said party be, what is over and above the minimum charge of \$5.00 per precinct?" (Italics the writers.)*

Your questions arise by reason of the amendment of former Section 4785-162 of the General Code, by the addition of the language, "in no case, less than five (\$5.00) dollars", after the provision in the statute providing for the depositing of a sum of money or a bond approved to pay the actual cost of the recount and further by the addition of the language immediately preceding the last sentence of the statute, "provided however, that the minimum charge of such recount shall not be less than five dollars (\$5.00) and the maximum more than ten dollars (\$10.00) per precinct."

Under the provisions of the old section, before amendment, the bond or the deposit of money, was conditioned for the payment of the actual cost of the recount. It is a well established principle of statutory construction that when the legislature amends a statute it intends a change of meaning to the extent of the change in language. If, therefore, it had been the intention of the legislature that the deposit of money for a bond was for the purpose of paying the actual cost of the recount, even though it might have been less than \$5.00 per

precinct, the amended language would have been useless and I can not presume that the legislature added the language it did without intent.

It is therefore my opinion that:

1. The actual cost of a recount, pursuant to Section 4785-162, General Code, must be disregarded when such cost is less than \$5.00, per precinct, such minimum cost being fixed by statute at \$5.00 per precinct.

2. When the result of the election is not changed by the recount, the amount to be refunded to a candidate requiring such recount is determined by returning the entire deposit for any precinct in which an error of two percent of the total vote cast concerning an issue or office is found; but in all other precincts in which the error does not amount to two percent of the total of such recount and does not change the result of the election even though the cost is less than \$5.00 per precinct, there should be deducted from the deposit the sum of \$5.00 for each precinct in which a recount is required and the remainder of such excess deposit returned to the candidate.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3948.

APPROVAL, LEASE TO OHIO CANAL LAND IN MASSILLON, OHIO—
THE McLAIN GROCERY COMPANY.

COLUMBUS, OHIO, January 13, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from your department submitting for my examination and approval a certain canal land lease in triplicate executed on behalf of the State of Ohio by your predecessor, Hon. A. T. Connor. By this instrument there is leased and demised to The McLain Grocery Company of Massillon, Ohio, for a term of ninety-nine years, renewable forever, a certain parcel of abandoned Ohio Canal property which is more particularly described as follows:

“Beginning at a point at the intersection of the south line of Charles Street, extended, with the easterly top water line of the Ohio Canal property, said point being One Hundred and Thirty-six and five-tenths (136.5') feet west of the southwest corner of Charles and Erie Streets in said City; thence southerly, along the easterly top water line of the Ohio Canal, a distance of One Hundred and Twelve (112') feet to a point in said water line that is One Hundred and Thirty-five (135') feet of the west line of Erie Street, measured at right angles thereto; thence westerly crossing said Canal, along the south line of Charles Street produced, a distance of Seventy-one and four-tenths (71.4') feet, more or less, to a point in the west line of said Canal property; thence northerly along the said west line and parallel to the westerly line of Canal Street, and fifty-eight (58') feet easterly therefrom, a distance of One Hundred and Twelve (112') feet to a point in said west line; thence easterly along the south line of Charles Street, produced, crossing said Canal a distance of Seventy-one and Seventy-hundredths (71.70') feet, more or