fractional share, and by action of its board of directors may issue in lieu thereof scrip or other evidence of ownership which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle the holder to vote or to receive dividends.

* * * * * *"

I think it is clear from a reading of this portion of the section that the issuance of fractional shares therein provided for is a mere temporary expedient and that it was not within the contemplation of the legislature to authorize a general plan of fractional issues such as is provided in the articles in question. That the shares in the present instance are not, in reality, fractional shares at all, is disclosed by the provision as to voting right which I have hereinabove quoted from the articles. The fractional one-twentieth share of common stock is entitled to one vote and what is denominated as a full share is given twenty votes. In truth and in substance, therefore, the certificate for one share would represent twenty shares of no par value.

In like manner it may be stated as to the preferred shares that a certificate for one share would in reality represent four shares of the par value of $20.00 each.

It seems apparent that this plan has been adopted for the specific purpose of avoiding the payment of the legitimate fees as provided in section 176 of the General Code from which I have quoted. I have no difficulty in looking through the form to the substance of the articles of incorporation. While it is specifically stated that the maximum number of shares which the corporation is authorized to have outstanding is forty-five hundred shares, this is clearly contradicted by the subsequent provisions for the issuance of fractional shares.

The authority conferred by the articles as filed is to issue a total of fifty thousand shares, and you are therefore advised that the proper fee for the filing of the articles would be ten cents for each share up to and including ten thousand shares and five cents for each additional share, which would make an aggregate of three thousand dollars.

Respectfully,
EDWARD C. TURNER,
Attorney General.

723.

HOUSE BILL No. 177—EFFECTIVE DATE.

SYLLABUS:

House Bill No. 177, *by virtue of the provisions of Section* 1d *of Article II of the Constitution of Ohio, went into immediate effect.*

COLUMBUS, OHIO, July 11, 1927.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

"A question of considerable importance has been unexpectedly presented to the commission involving the determination of the time at which the recent act of the General Assembly, formerly House Bill No. 177, has gone, or will go, into effect.

You will note that sections 5526–3 and 5526–4 as carried in this act broaden the meaning of the word 'dealer' as used in the gasoline tax law and render subject to tax certain transactions which prior hereto were not assessable. The inquiry immediately follows: Did this measure to any extent or in any way take effect as soon as signed by the governor as being a law providing for a tax levy under Section 1-d or at the end of the usual ninety day period created by Section 1-c of Article II of the state constitution?"

The title of House Bill No. 177 is as follows:

"To amend Sections 5530 and 5534 of the General Code, to supplement Sections 5526 and 5529, by the enactment of Sections 5526–3, 5526–4, 5529–1, 5529–2 and 5529–3, relative to the assessment of the excise tax on motor vehicle fuel."

Looking into the substance of the bill, it is seen that most of the provisions therein are amendatory to the original gasoline tax sections and involve certain changes in detail as to the administration of that tax. As you suggest, however, certain supplementary sections are enacted, among which are Sections 5526–3 and 5526–4, which tend to broaden the effect of the law by enlarging the definition of the term "dealer" and rendering subject to tax certain transactions theretofore not assessable. Those sections are as follows:

"Sec. 5526–3: In addition to its meaning as defined in original Section 5526, the term 'dealer' shall be held to mean and include the State of Ohio, and any political subdivision thereof, which imports or causes to be imported into the State of Ohio any motor vehicle fuel or fuels, for use, distribution or sale and delivery in Ohio, and after the same reaches the State of Ohio, or which produces, refines, prepares, distills, manufactures or compounds such motor fuel, as herein defined, in the State of Ohio for use, distribution or sale and delivery in Ohio."

"Sec. 5526–4: In the event any person, firm, association, partnership or corporation producing, refining, preparing, distilling, manufacturing or compounding motor vehicle fuel in Ohio, shall sell such motor vehicle fuel in tank car lots to any purchaser who is duly registered as a dealer under the provisions of Section 5528, General Code, then such purchaser and not the seller shall be deemed the 'dealer' as to the motor vehicle fuel contained in such tank car lots."

By the provisions of Section 5526–3, the term "dealer" is made to include the State of Ohio and any political subdivision thereof. By the succeeding section, purchasers of motor vehicle fuel from producers in Ohio in tank car lots to those registered as dealers, are held to be the dealer and subject to the tax and the seller is exempted from the provisions of the act.

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies", among others, "shall go into immediate effect." Your specific question is as to whether House Bill 177 is subject to referendum.

The law, as heretofore stated, is amendatory of and supplementary to the prior existing gasoline tax law, and in the main deals with the details of administration. The sections above quoted, however, do actually levy a tax in the sense that they extend theretofore existing laws to cover certain instances not theretofore included. To this extent I believe it may be properly said that the act is a law levying a tax.

While the Supreme Court of Ohio has adopted the rule of strict construction with reference to the section of the Constitution heretofore referred to, I am of the opinion

that the act in question is clearly one providing for a tax levy. I refer particularly to the case of *State ex rel vs. Forney*, 108 O. S. 463. In the discussion of the Taft act in that opinion, the court concludes that the act was not self executing but merely conferred power on others to act. It was stated that no levy was actually made, but that merely the authority to make a levy was conferred. The court, however, quotes with approval the following language from the per curiam opinion in the case of *State ex rel vs. Milroy*, 88 O. S. 301:

> "The general assembly did not, in this act, impose a tax, stating distinctly the object of the same, nor did it fix the amount or the percentage of value to be levied, *nor did it designate persons or property against whom a levy was to be made.*" (Italics the writer's.)

Tested by the language which was quoted with approval in the Forney case, the present act certainly designates persons not theretofore covered by the gasoline tax as now being subject to it. For this reason, I feel that House Bill No. 177 is a law providing for a tax levy.

There arises, however, the further question whether the various sections of the act are severable so that certain ones of them, notably the ones heretofore quoted, go into immediate effect because they do provide for a tax levy, and the remainder, since they are concerned merely with the administrative details, are subject to referendum. I think such a contention is without foundation. This is so because a part of the act provides for a tax levy and the remaining sections pertain solely to administrative details in connection with the collection of the tax. The levying portions and the administrative portions are so inseparably bound together that it would seem to be scarcely possible to separate them.

I am accordingly of the opinion that House Bill No. 177, by virtue of the provisions of Section 1d of Article II of the Constitution of Ohio, went into immediate effect.

Respectfully,
EDWARD C. TURNER,
Attorney General.

724.

CANAL LANDS—LEASE BY CITY OF DAYTON FOR ABANDONED MIAMI & ERIE CANAL—USE OF WATER SHOULD NOT BE INCLUDED IN APPRAISEMENT.

SYLLABUS:

1. *The portion of the Miami and Erie Canal abandoned by the Act of the General Assembly* (111 *O. L.* 208) *for which the City of Dayton has applied for a lease, is to be leased to the city subject only to leases made by the state for lands, and not subject to leases for the use of water.*

2. *Leases for the use of water should not be included in the appraisement upon which the rental to be paid by the city is based.*

3. *Leases made by the state for the use of water will be terminated upon the execution of the lease to the city, and the land to be leased should be appraised without regard*