

and if the report which may be required is only for the use of the State or its Bureau of Accounting the same result might be obtained by providing for an examination of the accounts. If the State sees fit to provide for the making of a report as it has done, it has authority to make that report available for the uses for which it is intended by providing for its publication in any manner it sees fit. It is therefore my opinion that the Constitution, by its provision in Article XVIII, Section 13, has made not only the making of the report but its publication a matter of State regulation and it is not therefore a subject of local self-government.

Specifically answering your questions in the order asked, it is my opinion:

First, that the annual financial report of the chief fiscal officer of a city must be published in the manner provided by Section 291, General Code.

Second, a municipality by virtue of the home rule provisions of the Constitution may provide for the publication of financial reports in any manner it sees fit in addition to the publication of the financial report made by the fiscal officer as provided by Section 291, General Code.

Third, the penalty provided in Section 291, General Code, may be exacted from the fiscal officer of a city for failure to publish the annual financial report of a municipality as required by said section.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1832.

CORPORATION—REDUCTION OF CAPITAL BY REDEEMING SHARES  
NOT REQUIRED TO BE CANCELED—NOT REQUIRED TO FILE  
CERTIFICATE WITH SECRETARY OF STATE—REDEMPTION OF  
SHARES DISCUSSED.

*SYLLABUS:*

1. *A corporation which reduces its stated capital by redeeming shares which are not required to be canceled upon redemption is not required to file a certificate of such action with the Secretary of State.*

2. *Shares which, by the articles of incorporation, are subject to redemption, or redemption and cancellation, may be purchased by a corporation in anticipation of the redemption date and such shares become treasury shares until the redemption date. At the date fixed for redemption formal action should be taken by the board of directors redeeming such shares, which thereupon become authorized but unissued shares, unless the articles also require cancellation, in which event the authorized number of shares is reduced and a certificate thereof must be filed with the Secretary of State.*

COLUMBUS, OHIO, March 10, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication reading as follows:

“Having reference to Section 39 of the general corporation act you will note that there are apparently two certificates called for by this section, one

is a certificate of reduction of stated capital when effected otherwise than by redemption. The other a like certificate of reduction in cases where the articles of a corporation require shares to be canceled upon redemption.

Apparently no certificate is called for in cases of a reduction of stated capital where it has been effected by redemption alone. There seems, however, to be considerable difference of opinion as to the necessity of such certificate among the various members of the Bar who have from time to time submitted filings under the new act.

Quoting from one of a number of letters received, the following is submitted for your consideration as presenting certain questions which have arisen in connection with Section 39:

1. If, where a company had been incorporated with \$100,000.00 of common par value stock and \$100,000.00 of preferred par value stock and all of the common was issued but none of the preferred, afterwards it was decided to eliminate the preferred leaving the capital at \$100,000.00 of common stock, certainly the proper step would be by amending the articles under Section 14 (d) and Section 15 of the Corporation Act. Also it is obvious that this is not a reduction of stated capital, and that no other or further action would be necessary.

2. If, however, the \$100,000.00 of preferred stock should be issued, but afterwards redeemed as provided in Section 39, then these shares would have the *status of authorized but unissued shares*, and would be exactly the same as those above referred to. Accordingly there is no reason why the same procedure should not be followed, especially as it is provided that, unless the articles otherwise provide, no action taken under Section 39 shall operate as a reduction of the number of shares which the corporation is authorized to have outstanding.

3. It is expressly provided in Section 39 that a reduction of stated capital may be effected by redemption, and also that a certificate of reduction need only be filed when such reduction is effected *otherwise than by redemption*, except where the articles require shares to be cancelled upon redemption. In the latter case, it is also expressly provided that the certificate of reduction operates as a certificate of amendment of the articles and reduces the authorized number of the shares by the number cancelled.

4. Under Section 37 (1) where a corporation has shares *with par value*, its *stated capital* is the aggregate par value of the outstanding shares.

When the stated capital is reduced by redemption, the only action with reference thereto is that required by Section 39, under which the corporation shall write off from its stated capital an amount equal to the stated capital represented by the shares redeemed. This, however, is merely a bookkeeping entry.

Therefore, considering the act as a whole, and giving proper effect to its express provisions with reference to the redemption of stock *where the articles themselves do not require cancellation*, the procedure is clear and simple, viz., (a) redeem the stock; (b) write off on the books of the corporation the par value of the stock redeemed by deducting it from the total stated capital, which is the aggregate par value of all the shares theretofore outstanding; (c) amend the articles, by decreasing the authorized number of shares, at a meeting of shareholders under Section 15 or by unanimous written consent under Section 46; and (d) file a proper certificate of such amendment with the secretary of state as provided in Section 15 of the Act.'

In addition to the foregoing considerations, this department has also been asked to advise as to the application of the section in cases (1) where redemption is made but articles are silent both as to redemption and cancellation; (2) where articles provide for redemption alone, cancellation not being mentioned; (3) where articles do not mention redemption specifically but provided for a 'retirement or called in'; (4) where articles being silent as to redemption and cancellation preferred shares nevertheless carry redemption and cancellation clauses.

Your opinion is also asked as to whether or not a corporation which has redeemed and cancelled its shares where redemption alone is provided for in the articles may file the certificate mentioned in the last paragraph of Section 39.

Your opinion is further requested as to whether or not redeemed shares are to be classified as 'treasury shares' or as authorized but unissued shares. In this connection you are referred to the definition of treasury shares under Section 2 of the act and also to Section 41 wherein among other things it is stated that whenever a corporation shall acquire *in any way* (shares), they shall be carried on its books as treasury shares until disposed of by sale or reduction of stated capital."

The various questions which you present necessitate a careful examination of several sections of the new general corporation act. Since your inquiries involve, for the most part, cases of reduction of stated capital, it is important first to bear in mind just what this term means. Its definition is contained in Section 8623-37 of the General Code, which is as follows:

"Every corporation subject to this act shall have and shall carry upon its books a stated capital, which shall be an amount not less than \$500.00, except as otherwise provided in respect of consolidated corporations, shall be equal to

(1) the aggregate par value of outstanding shares having par value, including therein treasury shares, plus

(2) the aggregate amount of consideration received for its outstanding shares without par value, including therein treasury shares, except such portion of such consideration as shall have been expressly received and applied by the corporation as paid-in surplus; or if the shares without par value have been substituted for shares with par value, the aggregate amount of consideration received for such shares without par value shall be deemed to be the amount of the par value of the shares for which they were substituted, unless at the time of such substitution the stated capital of the corporation was reduced by appropriate proceedings, plus

(3) Such amount as may be transferred from surplus to stated capital upon the declaration of a share dividend, plus

(4) In the case of a corporation having shares without par value, such amount as may be transferred from surplus to stated capital."

The effect of the section is to compel the setting up upon the books of each corporation of a stated capital account, consisting of the amounts specifically enumerated therein. It is well to call attention in passing to the fact that this section clearly directs the inclusion of treasury shares within the stated capital of each corporation.

The succeeding section of the Code details the circumstances under which dividends may be declared. The section is, in part, as follows:

Sec. 8623-38. "No corporation shall pay dividends

(1) in cash or property, except from the surplus of the aggregate of its assets over the aggregate of its liabilities, plus stated capital, after deducting from such aggregate of its assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets;

\* \* \* "

You will observe that a correct account of stated capital must be kept in order that dividends may be properly authorized. It is unnecessary to quote the remainder of the section, which deals with various details incident to the declaration of dividends either in cash or shares. An examination of all of the provisions of the general corporation act reveals that the matter of stated capital is, perhaps, of most importance in connection with the declaration of dividends, although it also appears as a necessary consideration in connection with the distribution of excess assets on reduction of capital and in connection with the authority of a corporation to purchase shares.

From the foregoing it is apparent that the stated capital of a corporation is an account intended primarily for the protection of the shareholders and constitutes the check which the shareholders have upon the officers showing their contribution to the assets and the results of the operation of the corporation. On the other hand, creditors of the corporation are interested primarily in the actual assets and, so far as they are concerned, the record of stated capital is not of great materiality.

Section 8623-39 of the Code, to which your questions are specifically directed, is as follows:

"A reduction of stated capital shall be authorized as follows:

A. In case it is to be effected by redeeming shares subject to redemption under the articles, by such resolution or other action, if any, as the articles may require or prescribe.

B. In case it is to be effected by retirement of treasury shares, by vote of the board of directors.

C. In case it is to be effected by any other method, by a resolution setting forth the reduction to be made and the method by which it shall be effected, which resolution shall be adopted by the affirmative vote of the holders of two-thirds (or such other proportion not less than a majority as the articles may permit or require) of each class of shares regardless of limitations or restrictions on the voting power of any such classes, or by such other vote as may be prescribed in the articles.

A reduction may be effected:

1. By redeeming shares subject to redemption in the manner, and at not to exceed the price including premium, if any, prescribed by the articles; provided, however, that after such redemption there shall remain an excess of assets over all the debts and liabilities of the corporation, plus the amount, as reduced, of stated capital. Unless the articles otherwise provide, shares subject to redemption may be purchased for redemption at not to exceed the redemption price, including premium, prescribed in the articles; but no such purchase shall be made which will favor any holder of such shares over any other such holder.

2. By the voluntary surrender by each or any holder of shares of one or more classes of his shares, and issuing to him in lieu thereof a decreased number of shares.

3. By canceling shares owned by the corporation and held in its treasury.

4. By reducing the par value of shares pursuant to an appropriate amendment of the articles.

5. By reducing the stated capital represented by shares without par value.

6. In any other way not repugnant to law.

Upon effecting reduction, the corporation shall write off from its stated capital an amount equal to (a) the stated capital represented by the shares redeemed, purchased, or cancelled; (b) the amount by which the par value of outstanding shares has been reduced, and (c) the amount by which the stated capital represented by shares without par value has been reduced.

Unless the articles otherwise provide, no action taken by any corporation under the provisions of this section shall operate as a reduction of the number of shares which such corporation is authorized to have outstanding; and whenever shares are redeemed under the provision hereof such shares shall have the status of authorized but unissued shares.

Whenever a reduction of stated capital is to be effected otherwise than by redemption, a certificate of reduction of stated capital, signed by the president or a vice-president and the secretary or an assistant secretary, shall be filed in the office of the secretary of state, stating:

(a) The amount of stated capital of the corporation prior to such reduction.

(b) The amount of stated capital to remain after such reduction.

(c) The method by which such reduction is to be effected, including a copy of the resolution of reduction and a statement of the manner of its adoption.

The directors may proceed to effect such reduction upon the filing of such certificate.

An amendment of articles and a reduction of stated capital may be included in one certificate filed in the office of the Secretary of State.

If the articles require shares to be cancelled upon redemption, a like certificate of reduction shall be filed stating that such cancellation has been made and such certificate shall operate as a certificate of amendment of the articles, and shall reduce the authorized number of shares of a corporation by the number of shares cancelled."

As you point out, this section requires the filing of a certificate of reduction of stated capital when such reduction is effected otherwise than by redemption of shares. It further requires the filing of a certificate where shares which have been redeemed are by the articles required to be cancelled and the certificate in this instance operates as a certificate of amendment of the articles reducing the authorized number of shares of the corporation by the number of shares cancelled. The section does not, in terms, require the filing of any certificate of reduction with the Secretary of State where shares are redeemed which are not, by the articles, required to be cancelled.

The reason for the failure to require a certificate of reduction in the case of mere redemption of shares is not at first apparent. If, however, it be borne in mind that redemption and consequent reduction of stated capital can only be accomplished pursuant to authority contained in the articles of incorporation, a better,

understanding of the reasons of the framers of the law may be reached. The articles of incorporation specifically providing for redemption, there is already a public record available to stockholders and others of the fact that the stated capital of the corporation will be reduced at the time of redemption. This is, of course, not true in the event of reduction of stated capital otherwise than by redemption. While it is true with respect to redemption where the articles also require cancellation, yet the record in this instance is not so much for the purpose of giving notice of the reduction of stated capital as to make public record of the reduction of the authorized number of shares. You will observe that the last sentence of the above quoted section provides that the certificate shall operate as a certificate of amendment of the articles, reducing the number of shares. Hence, the omission of the requirement of a certificate in the case of redemption alone may be attributed to the fact that the articles of incorporation have already given notice that reduction of stated capital will be effected upon redemption.

I may, therefore, resolve the doubt which you express in the first two paragraphs of your letter by stating that no certificate of reduction of stated capital is required where such reduction is accomplished by the redemption of shares pursuant to authority contained in the articles of incorporation, the articles being silent as to cancellation of such shares.

Before entering into a detailed discussion of the remaining questions, it is well to quote the provisions of Section 8623-41 of the General Code, as follows:

"A corporation may purchase shares of any class issued by it:

(a) When the articles authorize the redemption of such shares and do not prohibit such purchase; or

(b) To collect or compromise a debt, claim or controversy in good faith; or

(c) To the extent of the surplus available for cash dividends when authorized by the affirmative vote of the holders of two-thirds of each class of shares outstanding, regardless of limitations or restrictions on the voting power of any such class, or by such other vote as may be prescribed in the articles, or by the board of directors when authorized by the articles, but no such purchase shall be made so as to favor any shareholder over any other; or

(d) For the purpose of resale or allotment to employees under the provisions of Section 36 of this act; or

(e) From an employee who has purchased such shares from the corporation under an agreement reserving to the corporation the right to repurchase or obligating it to repurchase.

Whenever a corporation shall acquire in any way any of its own shares, they shall be carried on its books as treasury shares until disposed of by sale or reduction of stated capital.

A corporation shall not purchase its own shares except as provided in this section, nor unless after such purchase there shall remain an excess of assets over all the debts and liabilities of the corporation, plus stated capital after deducting the amount of stated capital in respect of the shares to be purchased."

This section and Section 8623-39, supra, must be read together and harmonized if possible. It is perhaps well to bear in mind the distinction between an ordinary purchase of shares by a corporation and the redemption of shares. Redemption is

the exercise by a corporation of a right reserved by it through contract expressed in the articles to call in and purchase its shares at a price stipulated in the contract. This right, being contractual, may be exercised in the manner and upon the terms stated in the contract, which ordinarily appears upon the face of the certificate. The redemption price is ordinarily fixed by the contract at the time of the sale of the shares and hence the exercise of the right of redemption is clearly distinguishable from an ordinary purchase of shares. The latter contemplates going into the open market or buying at a price mutually agreed upon at the time of purchase. This distinction must be borne in mind in the consideration of the questions you present.

You quote in your letter certain observations contained in a letter received by you and I shall give consideration to these in their order, quoting them herein for the purpose of clarity.

“1. If, where a company had been incorporated with \$100,000.00 of common par value stock and \$100,000.00 of preferred par value stock and all of the common was issued but none of the preferred, afterwards it was decided to eliminate the preferred leaving the capital at \$100,000.00 of common stock, certainly the proper step would be by amending the articles under Section 14 (d) and Section 15 of the Corporation Act. Also it is obvious that this is not a reduction of stated capital, and that no other or further action would be necessary.”

The conclusion stated in this instance is, I believe, correct. The preferred shares in question were never issued and hence always had the status of authorized but unissued shares. The elimination of the shares by amendment of the articles of incorporation could not in any way affect the stated capital and hence the amendment of the articles is the only official action necessary.

The second quotation is as follows:

“If, however, the \$100,000.00 of preferred stock should be issued, but afterwards redeemed as provided in Section 39, then these shares would have the *status of authorized but unissued shares*, and would be exactly the same as those above referred to. Accordingly there is no reason why the same procedure should not be followed, especially as it is provided that, unless the articles otherwise provide, no action taken under Section 39 shall operate as a reduction of the number of shares which the corporation is authorized to have outstanding.”

The facts given in this instance are not sufficient to warrant a categorical answer. If the preferred shares in question were subject to redemption only, then their redemption could be effected, which would give them the status of authorized but unissued shares. If the corporation further desires to reduce the authorized number of shares by eliminating the preferred issue, it would be necessary to take proper steps to amend the articles of incorporation. On the other hand, if the articles required cancellation of this preferred issue upon redemption, no separate action amending the article would be necessary, but the filing of the one certificate mentioned in the last paragraph of Section 8623-39 would operate as both a certificate of reduction of stated capital and a reduction of authorized number of shares.

The third observation reads:

“It is expressly provided in Section 39 that a reduction of stated capital

may be effected by redemption, and also that a certificate of reduction need only be filed when such reduction is effected *otherwise than by redemption*, except where the articles require shares to be cancelled upon redemption. In the latter case, it is also expressly provided that the certificates of reduction operates as a certificate of amendment of the articles and reduces the authorized number of shares by the number cancelled."

This observation needs no discussion in view of what I have said heretofore.

The final statement from which you quote is as follows:

"4. Under Section 37 (1) where a corporation has shares *with par value*, its *stated capital* is the aggregate par value of the outstanding shares.

When the stated capital is reduced by redemption, the only action with reference thereto is that required by Section 39, under which the corporation shall write off from its stated capital an amount equal to the stated capital represented by the shares redeemed. This, however, is merely a bookkeeping entry.

Therefore, considering the act as a whole, and giving proper effect to its express provisions with reference to the redemption of stock where the articles themselves do not require cancellation, the procedure is clear and simple, viz.: (a) redeem the stock; (b) write off on the books of the corporation the par value of the stock redeemed by deducting it from the total stated capital, which is the aggregate par value of all the shares theretofore outstanding; (c) amend the articles, by decreasing the authorized number of shares, at a meeting of shareholders under Section 15 or by unanimous written consent under Section 46; and (d) file a proper certificate of such amendment with the Secretary of State as provided in Section 15 of the act."

The statement just quoted is correct in that, where redemption alone is effected, the only procedure necessary is to write off the proper amount from the stated capital of the corporation, which is a bookkeeping entry on the books of the corporation. It is also true that, as stated in the above quotation, if it is thereafter desired to reduce the authorized number of shares, this must be accomplished by proper action of the shareholders amending the articles of incorporation and a certificate thereof must be filed with the Secretary of State.

You also inquire as to the applicability of Section 8623-39 in an instance where redemption is made but the articles are silent both as to redemption and cancellation. I assume from your question and the language used in your succeeding questions that the shares themselves contain no redemption or cancellation clause. Under these facts, the transaction would not, in my opinion, constitute technically a redemption at all. The action of the corporation would be a purchase of shares and would be governed by the provisions of Section 8623-41 of the Code. You will observe that paragraph (c) of this section prescribes the limitations upon such action and the manner in which it may be effected. The next to the last sentence specifically states that the shares so acquired become treasury shares until disposed of by sale or reduction of stated capital. This provision, coupled with the statement in Section 8623-37 that treasury shares shall be included in stated capital, compels the conclusion that the mere act of purchase does not in itself constitute a reduction of stated capital.

Since my interpretation of the transaction in question constitutes it a purchase rather than a redemption, the action of the corporation would be controlled by the provisions of paragraph (c) of Section 8623-41 of the Code. You will observe

that this section authorizes the purchase only to the extent of the surplus available for cash dividends and requires the affirmative vote of the holders of two-thirds of each class of shares outstanding regardless of limitations or restrictions on the voting power of any such classes or by such other vote as may be prescribed in the articles, or by the board of directors when authorized by the articles. This paragraph, rather than paragraph (a), would govern since, as you state, the articles are silent as to redemption and cancellation. The distinction is important not only in view of the requisite vote but also because the purchase must be made from surplus available for cash dividends, whereas in the case of redemption the purchase may be made if there remains after purchase an excess of assets over all the debts and liabilities of the corporation, plus stated capital after deducting the amount of stated capital in respect of the shares to be purchased.

If thereafter the corporation desired to reduce its stated capital, it would be required to proceed by retirement of treasury shares, since the mere purchase of shares does not give them the status of authorized but unissued shares. They still remain a part of stated capital until retired by action of the board of directors under Section 8623-39, paragraph (b). If such action is taken, a certificate should be filed with the Secretary of State, because it constitutes a reduction of stated capital otherwise than by redemption. The shares thereupon would become authorized but unissued shares and, if the corporation desired to eliminate the shares entirely, it still would be necessary to adopt an amendment to the articles of incorporation, as provided in Sections 8623-14 and 8623-15 and file a certificate thereof with the Secretary of State. It will be noted, however, that the next to the last sentence of Section 8623-39 provides that an amendment of the articles and a reduction of stated capital may be included in one certificate filed in the office of the Secretary of State.

Your next inquiry is as to the application of Section 8623-39 where the articles of a corporation provide for redemption alone, cancellation not being mentioned. The discussion in the early part of this opinion is sufficient to answer this inquiry. I may add, however, that if after redemption the corporation desires further to reduce its authorized capital stock, it may, as suggested in my discussion above, by proper action under Section 8623-15 of the Code, amend its articles and combine the amendment with the reduction of stated capital in one certificate, under authority of Section 8623-39.

You further inquire as to the application of this section where articles do not mention redemption specifically but provide for a "retirement or called in". We do not have the benefit of any statutory definition of the word "retirement", although it is used with reference to treasury shares in subdivision B of Section 8623-39, heretofore quoted. I am of the opinion, however, that this term may properly be construed as being synonymous with redemption and consequently the application of Section 8623-39 is the same as in the situation just discussed.

Your next inquiry is as to the effect of Section 8623-39 of the Code, where the articles of incorporation are silent as to redemption and cancellation but the preferred shares carry redemption and cancellation clauses. It is undoubtedly improper to issue a class of shares with redemption and cancellation clauses without having such authority expressed in the articles of incorporation, since paragraph 4 of Section 8623-4 specifically requires this information to be contained in the articles. I nevertheless feel that where such shares are actually outstanding, they constitute a valid contract between the corporation and the shareholders. This would not, however, authorize the corporation to proceed in the same manner as if the redemption and cancellation provisions were expressed in the articles. You will observe that the language of Section 8623-39 is very specific with respect to the shares redeemed being subject to redemption under the articles. Consequently, I

do not feel justified in holding that the redemption may be accomplished under paragraph A of that section, since a redemption must, in my opinion, be authorized in the articles and the acquisition of shares in any other way must be regarded as a purchase. Consequently the procedure in this instance would be the same as that which has been heretofore described with reference to the instance which you present, where redemption is made but the articles are silent as to both redemption and cancellation.

Your next inquiry is whether or not a corporation which has redeemed and cancelled its shares, where redemption alone is provided for in the articles, may file the certificate mentioned in the last paragraph of Section 39. My previous discussion constitutes a substantial answer to this inquiry. In the absence of specific authority in the Articles of Incorporation for the cancellation of the shares, I feel that action must be had by the corporation amending its articles, pursuant to Section 8623-15, if it is desired to effect a reduction of the authorized number of shares. The amendment may, however, be combined with the reduction of stated capital in one certificate, as provided in the next to the last sentence of said section.

I might point out that there exists a clear distinction between the cancellation of shares pursuant to mandatory requirements of the articles of incorporation and such action taken with respect to treasury shares. In the one instance the agreement of the stockholders has been that such shares shall automatically be cancelled and this provision carries with it the inference that the authorized number of shares will be correspondingly reduced. On the other hand, from the provisions of Section 8623-39, it is fairly clear that the mere cancellation of treasury shares, which is accomplished by action of the board of directors, does not in and of itself operate as a reduction of the authorized number of shares and hence "cancellation" has a different significance in this instance. In the one case, therefore, the specific direction for cancellation in the articles obviates the necessity of further action upon the part of the stockholders, but, since the articles are ordinarily silent with respect to the treatment of treasury shares, the further requirement of an amendment of the articles is necessary before the reduction of the authorized number of shares is accomplished.

Your last inquiry is as to whether redeemed shares are to be classified as "treasury shares" or as unauthorized and unissued shares. You invite my attention to the definition of treasury shares in Section 8623-2 as shares issued and paid for and thereafter acquired by the corporation, if not required to be cancelled, and also to the statement in Section 8623-41, to the effect that shares acquired by a corporation *in any way* shall be carried on its books as treasury shares until disposed of by reduction of stated capital. The statement in the section last referred to must be read in the light of other provisions of the section. It deals with the acquisition of shares by purchase and I therefore feel that, where reference is made to the acquisition of shares therein, it means by purchase. As before pointed out, shares acquired by purchase must, under the mentioned sentence of the section, be carried as treasury shares. The specific language of Section 8623-39 is that redeemed shares shall be carried as authorized but unissued shares. I therefore feel that this provision, and not the sentence of Section 8623-41, is controlling.

I desire to call your attention to what in my opinion constitutes an inconsistency in the act. Subdivision 1 of Section 8623-39 authorizes the purchase of shares subject to redemption, subject to certain limitations. This apparently is in itself sufficient authority for the corporation to purchase in the open market or by private contract shares which are subject to redemption in the future. Standing alone, this section would seem to provide that, upon such action by the corporation, a reduction of stated capital is effected and the shares so purchased become authorized but unissued shares.

On the other hand, subdivision (a) of Section 8623-41 gives authority to a corporation to purchase shares when the articles authorize the redemption of such shares, and do not prohibit such purchase. In this instance, however, such purchased shares become treasury shares and consequently the purchase in and of itself does not operate as a reduction of stated capital. In my opinion it is difficult to reconcile the conflict in these two sections in this respect. I feel, however, that a reasonable construction would be to require the carrying of the shares so purchased as treasury shares until the redemption date, at which time they would acquire the status of redeemed shares by formal action of the directors and thereupon the corporation should write off from its stated capital the amount represented by such shares and, if it desires to reduce the authorized number of shares, it should adopt an amendment of its articles to that effect. I am aware that this is a more or less arbitrary interpretation, but in my opinion it is impossible to reconcile the language of the two sections and I believe that this is the most reasonable interpretation that can be deduced.

I am not certain that I have touched upon all the phases of the questions which you have presented, but I feel that the foregoing discussion may be of assistance to you in the interpretation of the sections of the general corporation act under consideration.

Respectfully,  
 EDWARD C. TURNER,  
*Attorney General.*

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1833.

APPROVAL, NOTES OF FAIRVIEW VILLAGE SCHOOL DISTRICT,  
 CUYAHOGA COUNTY, OHIO—\$250,000.00.

COLUMBUS, OHIO, March 10, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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1834.

APPROVAL, NOTES OF BUCKSKIN TOWNSHIP RURAL SCHOOL DISTRICT,  
 ROSS COUNTY, OHIO—\$72,000.00.

COLUMBUS, OHIO, March 10, 1928.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*