

<i>Name</i>	<i>Position or Office</i>
Lemuel J. Hurst-----	Examiner
Fred W. Pace-----	Examiner
J. Ernest Ratcliff-----	Examiner
Nicholas Risch-----	Examiner
William C. Steely-----	Examiner
Sterry J. Storer-----	Examiner
Helen E. Tannehill-----	Examiner
Howard C. White-----	Examiner
Edward O. Barnet-----	Examiner
Frank E. Kenyon-----	Examiner
Henry Harris-----	Examiner

Said bonds apparently have been required in pursuance to Section 677 of the General Code, which in substance provides that the Superintendent of Building and Loan Associations shall require from each deputy, assistant, clerk and examiner appointed by him a bond of a surety company, for the faithful discharge of his duties, in such an amount as he may deem proper, for not less than \$5,000 in any case, the premium for which is to be paid by the Superintendent of Building and Loan Associations from funds appropriated for that purpose.

On examination I have found all of said bonds to have been executed in proper legal form, and have approved them only as to form, and return them herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

588.

CORPORATION—HAVING ONE CLASS OF SHARES—RIGHT TO REGULATE VOTING POWER—HOW NUMBER OF SHARES AUTHORIZED TO VOTE AT ANY GIVEN TIME COMPUTED.

SYLLABUS:

1. *A corporation organized under the General Corporation Act, having one class of shares, may provide, either in its original articles, or by way of amendment, that "each share of stock up to and including five shares, owned by any one person shall be entitled to one vote for each of said shares and no owner of shares shall be entitled to more than five votes, regardless of the number of shares owned by them."*

2. *In the event the above contemplated provisions are incorporated in the articles of incorporation of a corporation organized under the General Corporation Act for the purpose of computing the number of shares of the corporation authorized to vote at any given time, it is necessary to deduct from the total number of authorized and outstanding shares, such number of shares as may be held by any stockholders in excess of five shares. Furthermore, such excess number of shares held by stockholders in excess of five, are non-voting shares as long as so held, and in so far as voting privileges or requirements are concerned would be in the same position as shares belonging to any other non-voting class of shares.*

COLUMBUS, OHIO, July 2, 1929.

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

DEAR SIR:—Your letter of recent date is as follows:

"There has been submitted to the Secretary of State for filing, an amendment to articles of incorporation, which among other things provides as follows: 'each share of stock up to and including five (5) shares, owned by any one person shall be entitled to one vote for each of said shares and no owner of shares shall be entitled to more than five votes, regardless of the number of shares owned by them.' The articles of the company provide for but one class of shares and your attention is accordingly directed to General Code 8623-4, Paragraph four wherein the following language is used 'if the shares are to be classified.' Does the language mentioned mean that voting rights can be fixed only where there is a classification of shares? In other words, in the case of a company having but one class of shares, may the Secretary of State accept and file an amendment such as that indicated above or original articles of incorporation limiting and restricting the right to vote to various numbers of shares of the same class.

In connection with the question raised above your opinion is further requested as to whether or not where a majority vote is called for by the General Corporation Act or Articles of Incorporation such shall be taken to mean the vote of a majority of a restricted number of votes as contemplated by the amendment herein above."

I am further advised that this corporation was organized in October, 1928, under the General Corporation Act. Section 8623-14, General Code, being part of the General Corporation Act, in so far as is pertinent, is as follows:

"A corporation may amend its articles in any respect; provided, however, that only such provisions shall be included or omitted by amendment as it would be lawful to include in or omit from original articles made at the time of making such amendment, * * * * . In particular, without prejudice to the generality of such power of amendment, a corporation may, by amendment:

* * * * *

(k) Change any provision inserted in the articles pursuant to paragraph 7 of section 4 of this act.

* * * * *

Section 8623-4, General Code, being part of the same act, provides what the articles of incorporation of such corporations organized thereunder shall contain. Paragraph 4 of this section, to which you refer, is as follows:

"The maximum number and the par value of shares with par value, and the maximum number of shares without par value which the corporation is authorized to have outstanding; and if the shares are to be classified, the number and par value, if any, of the shares of each class and all the designations, preferences, conversion rights, voting powers, redemption rights and other relative rights or restrictions or qualifications of each class, all of which are hereinafter sometimes designated 'terms and provisions.'

* * * * *

It would appear from the reading of this paragraph alone that the authority to restrict or qualify the voting powers of shares of any class extends only to corporations, the shares of which are classified. Paragraph 7 of this same section, however, is as follows:

“Any lawful provisions which may be desired for the purpose of defining, limiting and regulating the exercise of the authority of the corporation, or of the directors or of the shareholders or of any class of shareholders, or for the purpose of creating and defining rights and privileges of the shareholders among themselves. Any provision authorized to be made in the regulations of a corporation may, if desired, be made in its articles.

* * * * *

There here exists authority to include in the articles of corporations organized under this act any lawful provisions which may be desired for the purpose of defining, limiting or regulating the exercise of the authority of the shareholders or for the purpose of creating and defining the rights and privileges of the shareholders among themselves. The breadth of the language, as used in paragraph 7 of Section 8623-4, supra, would apparently authorize a restriction of the voting power of shares of a corporation such as contemplated in your communication. There can be no question but that a provision as contemplated may result in the control of the corporation being vested in minority stockholders. Were it not for the express provision that the articles may contain any lawful provisions which may be desired for the purpose of creating and defining the rights and privileges of the shareholders among themselves, a discussion of such a provision which might vest control in minority stockholders would be pertinent. Even under such circumstances, the decisions are not uniform as to the validity of voting trusts which result in so placing the control of corporations.

In 14 Corpus Juris, 919, it is said :

“The fact that the trust agreement confers upon minority stockholders the right to control the policy of a corporation has been regarded by the courts in some cases as a factor tending to invalidate the agreement. However, an agreement by the majority of the stockholders conferring upon the minority stockholders the power to vote at all corporate meetings and manage the business for a specified time has been upheld.”

As previously stated, however, such authority appears to be expressly conferred in the General Corporation Act in paragraph 7 of Section 8623-4. As to incorporating such provisions as contemplated relative to voting rights in a certificate of amendment, Section 8623-14, supra, expressly provides that a corporation by amendment may include such provisions as it would be lawful to include in original articles made at the time of making such amendment. Clearly, this language includes paragraph 7 of Section 8623-4 as above discussed. It is noted that in paragraph (k) of Section 8623-14, the additional authority is granted to change any provision inserted in the articles pursuant to paragraph 7 of Section 4 of the act.

Specifically answering your first question, therefore, I am of the opinion that a corporation organized under the General Corporation Act, having one class of shares, may provide, either in its original articles, or by way of amendment, that “each share of stock up to and including five shares, owned by any one person shall be entitled to one vote for each of said shares and no owner of shares shall be entitled to more than five votes, regardless of the number of shares owned by them.”

Your second question refers to the number of shares which shall be necessary to constitute a majority after the filing of the above amendment. In the event the General Corporation Act or the articles of incorporation require a majority of all shares authorized to vote on a given question as distinguished from the majority of a quorum, it would appear that the shares authorized to vote would be the total number of authorized and outstanding shares of such corporation, less shares held by in-

dividual stockholders in excess of five shares. Such excess number of shares over five shares held by any stockholder are non-voting shares as long as so held, and in so far as voting privileges or requirements are concerned would be in the same position as shares belonging to any other non-voting class of shares.

I am therefore of the opinion that in the event the above contemplated provisions are incorporated in the articles of incorporation of a corporation organized under the General Corporation Act for the purpose of computing the number of shares of the corporation authorized to vote at any given time, it is necessary to deduct from the total number of authorized and outstanding shares, such number of shares as may be held by any stockholders in excess of five shares. Furthermore, such excess number of shares held by stockholders in excess of five are non-voting shares as long as so held, and in so far as voting privileges or requirements are concerned would be in the same position as shares belonging to any other non-voting class of shares.

Respectfully,

GILBERT BETTMAN,
Attorney General.

589.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN
FAYETTE COUNTY.

COLUMBUS, OHIO, July 2, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

590.

DISAPPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN
FAYETTE COUNTY.

COLUMBUS, OHIO, July 2, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of July 2, submitting for my approval as to form and legality supplemental final resolution covering the improvement of:

Fayette I. C. H. No. 10-A—Amount \$19,375.00.

The certificate of the Auditor of the Division of Highways executed on July 2, 1929, fails to disclose that there has been any amount appropriated from the highway improvement fund of the Department of Highways and Public Works, Division of Highways of Ohio to pay the State's share of the cost of this improvement. The authentication certificate of the president and clerk of the board of county commissioners of Fayette County is also not dated.