

tion, may not be denied her diploma by the arbitrary action of the school board subsequent to her being made the recipient of the honors of graduation.'"

"The court in the opinion last cited, however, said that school authorities may deny the right of a graduate to participate in public ceremonies of graduation unless cap and gown are worn."

Other cases in which consideration is given to the question of the reasonableness of rules and regulations promulgated by boards of education are found in the annotations to the case of *Wright vs. Board of Education*, 27 A. L. R. 1061, the annotations beginning at page 1074. In these cases the weight of authority is to the effect that rules by a board of education or other school authority forbidding membership of pupils in so-called Greek letter fraternities and providing for punishment for violation, by expulsion of the pupils or rendering them ineligible to participate in certain school activities, are valid. See

Wilson vs. Board of Education (1908) 233 Ill. 464, 15 L. R. A. (N. S.) 1136;
Favorite vs. Board of Education (1908) 235 Ill. 315;
Smith vs. Board of Education (1913) 162 Ill. App. 342;
Wayland vs. Hughes, (*Wayland vs. School Dist.* 1906), 43 Wash. 441, 7 L. R. A. (N. S.) 325.

Coming now to the answer to your particular inquiry, and having in mind the statutory authority clothing the boards of education of Ohio with various specific and general powers and authority, as herein set forth, and having in mind the discussions and rulings made in the several cases herein cited, I am of the opinion that if, upon proper consideration and in the exercise of their discretion, a board of education finds it necessary and desirable to promulgate and enforce a rule requiring that all children enrolled in the physical education courses (Section 7721, General Code, 110 O. L. 18) be provided with suitable suits to be used in such courses, they would have authority to do so.

Attention is directed to the provisions of Section 7777, General Code, which should be taken into consideration in connection with the enforcement of such rule. The section referred to authorizes boards of education under certain circumstances to provide clothing and other personal necessities to enable children to take advantage of the school privileges.

Respectfully,

C. C. CRABBE,
Attorney General.

2413.

CORPORATION ORGANIZED UNDER PROVISIONS OF SECTION 3516 ET SEQ.—HOW SAID CORPORATION MAY SURRENDER CORPORATE POWERS.

SYLLABUS:

Where a corporation is organized under the provisions of section 3516 et seq. and all proceedings are taken excepting that no officers are elected, such a corporation is without powers to perform any functions. Under such circumstances there is no method provided by statute whereby it may undo what has been done, except by

proceeding to elect officers, at which time the corporate power may be surrendered under the provisions of section 3513 G. C.

COLUMBUS, OHIO, April 27, 1925.

HON. G. WALTER BOOTH, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—You have requested my opinion upon the following:

"In 1921 all necessary steps were taken looking towards the incorporation of the village of Monroe Falls in this county, but to date the electors of the village have failed to elect officers as required by law. Under this set of circumstances the following questions have arisen:

"(1) Is the village a legally incorporated village for all purposes?

"(2) If so, how may it surrender its corporate powers, the procedure as outlined in G. C. 3513 being impossible since there is no council?

"(3) If not, are lots and lands described in plat of said village to be returned to the political subdivisions from which they came?

"(4) And, if they are to be so returned, how may this be done?"

Upon investigation of the statutes, it will be observed that there are two methods provided for the establishing of a corporation. The first proceeding is set forth in sections 3516 to 3525 inclusive of the General Code, and relates to the establishment of such village upon a petition to the county commissioners. This proceeding is based upon the territory having been laid off into village lots. The filing of the petition should set forth the number of supposed inhabitants in the proposed name of the village. Under this proceeding, if the commissioners find that the petition contains all the matters required, and the territory has the required population, they shall cause an order to be entered on the journal to the effect that the corporation may be organized. The commissioners are required to cause to be entered upon their journal all the orders and proceedings and cause a certified transcript to be delivered, together with the petition, map and other papers, to the Recorder of the county. The Recorder is required to file the transcript and other papers and unless enjoined before the expiration of sixty days, shall record the petition and transcript.

Section 3525 provides that when the record is made the corporation shall be deemed to be organized; whereupon the Recorder shall certify two transcripts, one to be forwarded to the Secretary of State and the other to be delivered to the agent of the petitioners.

The second method set forth in section 3526, et seq. is a very similar proceeding, except that it is made by petition to the township trustees and the question is submitted to the electors for their decision.

Section 3536 seems to be applicable to both methods of establishing corporations, and provides in substance that the first election of officers for such corporation shall be at the first municipal election after its creation, and the place of holding the election shall be fixed by the petition. While the statutes indicate that when the proceedings are had so as to require their certification that a corporation exists, it is a corporation, yet it will be apparent that it cannot perform any functions as such until proper steps have been taken to create its officers. A corporation acts through its officers and is without the power unless it has such.

An interesting question was presented to the Attorney General in 1912, and is discussed in an opinion found in Reports for said year at page 1510, which bears upon the question you present. In that case the question arose on account of a corporation being organized, the boundary line of which was coterminous with that of a township, in view of the provisions of section 3512, which provides:

"When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village."

It was pointed out in this opinion that if this section was strictly applied there would be no township officers after the date of incorporation. It is pointed out that in contemplation of the statute when the township officers under such circumstances relinquish their offices, the municipal officers are to take charge of and conduct the governmental affairs of the territory. In other words, it was indicated that such a village was a village in name only, and could not carry on any of its governmental affairs.

Without attempting to indicate the possible circumstances under which a corporation such as you describe may be regarded as a full-fledged municipal corporation, as heretofore indicated, it is apparent that it can not perform the functions for which it is organized. It can not adopt rules or regulations governing the conduct of its inhabitants or require the levy of taxes.

However, there seems to be no provision in the statutes which authorizes a turning back after it has progressed to the point you indicate. The law does not contemplate any surrender at such a stage, but does provide the machinery for it to be fully completed, by the election of officers.

Section 3536 G. C. provides :

"The first election of officers for such corporation shall be at the first municipal election after its creation, and the place of holding the election shall be fixed by the agent of the petitioners."

The section further prescribes the duties of such agent in connection with the holding of such an election and authorizes him to call a special election for such purpose. In other words, the duty of holding such elections would seem to be mandatory.

In an opinion by the Attorney General found in the Reports for the year 1912, page 1993, a question was presented on account of there having been a failure to elect a treasurer and clerk at the first general election. The then Attorney General indicated that it was the duty of the agent to have included such officers in the original call for the election, and having failed to do so, it was his duty to proceed to call such an election to elect such officers. While it is not expressly so held, it would seem to be the opinion of the said Attorney General that the holding of the election is a mandatory requirement. If this conclusion is correct, it would seem that the officers of such village may yet be elected and then of course the provisions of section 3513 could be applied.

In any event, no authority has been found for a surrender of whatever powers may have been obtained in view of the proceedings taken, or for the returning of the plats to the original subdivisions.

It is believed that the foregoing will dispose of your inquiries.

Respectfully,

C. C. CRABBE,
Attorney General.