

In one of the provisions of said lease there is granted to the lessee and to his heirs, executors, administrators, successors and assigns, "the right to exercise, jointly with the State of Ohio and its authorized agents, police powers over the lands and water front herein leased." It does not, of course, lie within the power of the conservation commissioner or of any other officer of this or any other department of the state government to delegate to any individual any part of the police power of the state. Reading this lease as a whole, however, I am inclined to the view that by this provision of the lease nothing more is intended than that the lessee in the conduct and operation of park grounds covered by said lease, shall have the right to provide for police protection in addition to that which may be furnished by the conservation division in the maintenance of Indian Lake as a public park. And, inasmuch as under the terms of the lease all arrangements with respect to such additional police protection on such park grounds are required to be approved by the conservation commissioner, I am not disposed to question the legality of this provision of the lease as I have interpreted the same in the light of the other provisions of the lease.

I am accordingly approving said lease as to legality and form and hereby endorse my approval upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3429.

CORPORATION—NOT FOR PROFIT—ORGANIZED UNDER REPEALED SECTIONS 3060 ET SEQ., G. C.—UNAUTHORIZED TO NOW RECEIVE COUNTY DONATIONS AND CONSTRUCT MEMORIAL BUILDING—REPEAL OF AFOREMENTIONED SECTIONS NOT RETROACTIVE—ARTICLES AND REGULATIONS MAY NOW BE AMENDED UNDER GENERAL CORPORATION ACT.

**SYLLABUS:**

1. *A corporation not for profit heretofore organized under the General Corporation Laws of Ohio for the purposes heretofore provided in Section 3060, General Code, which corporation did not acquire a site or institute proceedings for the construction of a memorial building prior to the repeal of Section 3060 by the 87th General Assembly, is not now authorized to receive donations from the county for such site or to take any action toward the construction of a county memorial building thereon.*
2. *The repeal of Sections 3060, 3061, 3061-1, 3062 and 3063, General Code, by the 87th General Assembly is not retroactive.*
3. *Corporations heretofore organized not for profit may amend their articles of incorporation or their code of regulations only in accordance with the provisions of the General Corporation Act.*

COLUMBUS, OHIO, July 15, 1931.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This is to acknowledge your recent request for my opinion upon the following three questions relating to the present status of a corporation not for

profit organized under the provisions of Sections 3060, et seq., General Code, in view of the repeal of these sections by the 87th General Assembly in the year 1927:

"1. Is the re-organization of a corporation entitled 'The Cuyahoga County Soldiers, Sailors, Marines and Pioneers Memorial Association,' which secured its charter under General Ohio Incorporation Laws prior to the repeal of Sections 3060, 3061, 3061-1, 3062 and 3063, General Code, viz. 18th day of September, 1923, Volume 300, page 585 of the Records of Incorporations in the Secretary of State's Office at Columbus, Ohio, valid under the law at the present time?

2. If so, would the re-organized corporation, under the above charter, be legally and lawfully qualified to receive donations of a site from the county and otherwise for the purpose of erecting a memorial hall, also to submit a bond issue to the people under Section 3059, still intact, should this legislature fail to reenact the above mentioned sections until 1933?

3. Is the repeal of above sections retroactive?"

The sections under which the corporation in question was organized were a part of Chapter 2, Title X, Division IV of the General Code, entitled "Memorial Buildings", comprising Sections 3059 to 3069-3, inclusive. Section 3059, which is still in force and effect, provides a method whereby two per cent or more of the electors of a county may, by petition, have submitted to the electors of such county the question of levying a tax not exceeding one mill for a period of not more than five years for the purpose of purchasing a site and erecting, equipping and furnishing a memorial building. The following five sections, being Sections 3060, 3061, 3061-1, 3062 and 3063, were repealed by the Uniform Bond Act of the 87th General Assembly.

Section 3060, General Code, provided as follows:

"In addition to the method provided in section 3059, when in any county of the state, the residents thereof and therein have formed a corporation not for profit under the laws of this state, or may hereafter form and establish such corporation, for the purpose of purchasing or otherwise securing a site in the county, and raising the funds to construct or erect thereon and to maintain a memorial building thereon to commemorate the services of the soldiers, sailors and marines of said county, it shall be lawful, at any time after the passage of this act (G. C. §§3069, et seq.) for the trustees of said corporation by proper resolution to determine the propriety and advisability of submitting to popular vote at the next regular county election the question of assessing a tax and placing a levy of not exceeding one mill annually for not exceeding five consecutive years on all the taxable property for the purpose of creating a fund to purchase or procure said site and to construct or erect thereon such a memorial building, and by petition to present to the court of common pleas of said county requesting the submission to the electors of the county the question of levying a tax in an amount stated in such resolution, but not exceeding one mill annually for a period of not more than five years, for the construction of such memorial building. Such court shall forthwith fix a day for the hearing thereof, not more than fifteen days from the presentation thereof, and if upon such hearing, the court finds such corporation legally organized and its proceedings regular, it shall certify the facts to the board of deputy state supervisors of elections of the county, which board shall thereupon submit to the

electors of the county, at the next ensuing general election, the question of the levying of such tax for the purpose specified, and take all such steps as may be required by law for the holding of elections upon such question."

Section 3061 provided for the notice of election and form of ballot, and it further provided in the event of a favorable vote, for the appointment by a judge of the court of common pleas of a board of seven trustees, which board or any part thereof may be the same persons as the members of the board of trustees of the corporation referred to in Section 3060, *supra*. Section 3061-1, General Code, provided for a tax levy outside of all limitations; Section 3062, the organization of the board of trustees referred to in Section 3061; Section 3063, the establishment of "the memorial building fund" and its disbursement.

From your second question, I assume that since the time of the organization of the corporation about which you inquire, nothing has been done toward the acquisition of a site and the construction of a memorial building thereon. Your inquiry, therefore, resolves itself into one of whether or not a corporation organized with certain defined powers which it has not exercised may now exercise such powers after the legislature has repealed the sections of the law under which such powers were heretofore held. This, I take it, is the basic legal question involved in your second inquiry, which I shall consider first.

Section 2 of Article XIII of the Constitution provides that "Corporations may be formed under general laws; but all such laws may from time to time be altered or repealed." It has been well established in this state that since 1851 an act of the legislature which modifies the powers of any corporation organized under the general laws of Ohio is not in conflict with the Dartmouth College case or violative of the Federal Constitution.

In the early case of *State v. Sherman*, 22 O. S. 411, the Supreme Court of Ohio said upon this subject at p. 429:

"By the present constitution of Ohio, the power of the legislature to grant charters of incorporation is subjected to important limitations, which did not exist under the constitution of 1802. One of these is, that the grant must be made by a general law; another is that the charter must be subject to alteration and revocation by the legislature; and a third is, that the grant must be made in some such form as will subject the stockholders to individual liability, to at least a certain extent, for the debts of the corporation."

Again in the case of *Shields v. State*, 26 O. S. 86, the following language is used at pp. 93, 94:

"The claim seems to be, that section 2 of article 13 of the constitution merely reserves to the legislature the power to prevent the organization of new companies under the law, by repealing or changing it, and that corporations organized under it before the repeal or change are beyond legislative control, equally as though no such provision had been inserted in the constitution. We can by no means assent to such a proposition. This section of the constitution is to be construed in connection with section 2 of article 1, which declares that 'no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.'"

See also *Allen v. Scott*, 104 O. S. 436.

It is, accordingly, my opinion that a corporation not for profit heretofore organized under the General Corporation Laws of Ohio for the purposes heretofore provided in Section 3060, General Code, which corporation did not acquire a site or institute proceedings for the construction of a memorial building prior to the repeal of Section 3060 by the 87th General Assembly, is not now authorized to receive donations from the county for such site or to take any action toward the construction of a county memorial building thereon.

In your third inquiry you ask as to whether or not the repeal of the sections in question is retroactive. In the enactment of the Uniform Bond Act, the 87th General Assembly repealed these sections of the General Code, but made no attempt to provide that such repeal should be in any way retroactive; in fact, by the express provisions of Section 20 of that act, its effect is clearly prospective. This section provides:

“Bonds issued prior to the effective date of this act and bonds issued after said date, which have been approved by vote of the people, or by resolution of the taxing authority prior to the day this act is filed with the secretary of state, shall be valid obligations of the taxing district issuing the same if they would be valid under the provisions of law in effect prior to the passage of this act. Bonds which have been approved by vote of the people, prior to the effective date of this act, may be issued thereafter under the provisions of section 2293-25 to 2293-29 inclusive. Tax levies, in anticipation of which any such bonds have been issued, shall be levied notwithstanding the repeal of the law authorizing such levies.”

Your third question should, accordingly, be answered in the negative.

There remains to be considered the matter of the reorganization of the corporation in question. Sections 8623-97, et seq., of the General Corporation Act, relate to corporations not for profit. Section 8623-113 authorizes corporations not for profit to amend their articles in any respect subject to the proviso that “Only such provision shall be inserted or omitted by amendment as it would be lawful to insert or omit, as the case may be, in original articles made at the time of making such amendment; and provided further, the purpose or purposes for which the corporation was formed shall not be substantially changed.” I do not have the articles of incorporation of the corporation in question before me and am therefore unable to pass upon the question of whether or not its original purpose clause was sufficiently broad to authorize an amendment under this section. You speak of a “reorganization” of the corporation. You do not state just what is sought to be accomplished under this so-called reorganization. The General Corporation Act contains no provisions for the “reorganization” as such, of corporations not for profit. Such purposes are effectuated customarily by either amendment of the articles under Section 8623-113 or by changing the code of regulations as authorized by Section 8623-101, General Code. It is my opinion that any so-called reorganization of the corporation in question must be effectuated in accordance with the provisions of the General Corporation Act. It is believed a more specific answer to your question may not be given upon the facts presented.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*