

661.

CORPORATION—FEE CHARGEABLE WHEN CERTIFICATE OF REORGANIZATION FILED WITH SECRETARY OF STATE.

SYLLABUS:

The fee to be charged for filing a certificate of reorganization under Section 8623-15a, General Code, is the same as provided in Section 176, General Code, for filing and recording a certificate of amendment.

COLUMBUS, OHIO, July 25, 1920

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

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

“Having regard to the fact that amendments to the General Corporation Act will soon go into effect, your early advice is requested as to whether or not the Secretary of State is authorized to collect any specific fee for the filing of certificates of reorganization under Section 8623-15a, other than the usual filing fee heretofore charged for amendments and amendments carrying increases of shares. The last paragraph, but one, of the section referred to, by inference apparently classifies certificates of reorganization as amendments.”

Section 8623-15a, as enacted by the 88th General Assembly, provides the manner in which a corporation may reorganize. Without quoting the section in full it is sufficient for the purposes of this opinion to call attention to the fact that under this section the board of directors of a corporation may adopt a plan of reorganization which may include, among other things, “any change in its articles, including changes of issued or unissued shares which could be effected by amendment.” This section also provides that when a plan of reorganization shall have been adopted a certificate of reorganization “shall be * * * filed in the office of the Secretary of State.” The next to the last paragraph of this section, to which you refer, is as follows:

“If desired, amended articles stating the plan of reorganization adopted may be filed in lieu of the certificate of reorganization herein provided for.”

It is obvious that a corporation may be reorganized under the provisions of this section in such a way as to effect an amendment to its articles. If such is the case, and amended articles are filed in lieu of a certificate of reorganization, the fees to be charged for filing such amendment would be based upon the provisions of paragraphs two and eight of Section 176, of the General Code; paragraph two providing a schedule of fees to be charged for filing a certificate of amendment increasing the number of shares authorized, and paragraph eight providing the fee to be charged in the event the certificate of amendment does not increase the number of authorized shares.

In the event a corporation is reorganized under the provisions of Section 8623-15a, and such reorganization effects a change in its articles but a certificate of reorganization is filed instead of a certificate of amendment, the fee to be charged for filing a certificate of reorganization would manifestly be the same as if amended articles were filed. If such certificate of reorganization increases the number of authorized shares, I do not believe it could be said that the provisions of paragraph two of Section 176 would be inapplicable merely because such increase would be effected by an instrument called a certificate of reorganization instead of a certificate of amendment. The Legislature has provided definite fees to be charged by the Secretary of State for

filing instruments amending articles of incorporation of corporations organized under the laws of Ohio and any instrument which does in fact amend such articles, is, in my opinion, regardless of what it may be named, a certificate of amendment within the meaning of paragraphs two and eight of Section 176, General Code.

Considering now the case where a certificate of reorganization does not in any way amend the articles of incorporations, it is provided as above pointed out, that such certificate of reorganization *shall* be filed in the office of the Secretary of State. Paragraph 8 of Section 176, in addition to providing for the fee to be charged for filing and recording a certificate of amendment which does not increase the number of authorized shares of the corporation, also includes "any other certificate or copy required or permitted to be filed in the General Corporation Act." A certificate of reorganization is clearly a certificate required to be filed by the General Corporation Act, and therefore comes under the same paragraph of Section 176 specifying the fee to be charged for filing and recording a certificate of amendment which does not increase the number of authorized shares.

Specifically answering your question, I am of the opinion that the fee to be charged for filing a certificate of reorganization under Section 8623-15a, General Code, is the same as provided in Section 176, General Code, for filing and recording a certificate of amendment.

Respectfully,

GILBERT BETTMAN,

Attorney General.

662.

APPROVAL, CONTRACT FOR ELECTRIC CURRENT TO BE FURNISHED
BY THE WOOSTER ELECTRIC COMPANY TO THE INSTITUTION
FOR FEEBLE-MINDED, APPLE CREEK, OHIO.

COLUMBUS, OHIO, July 25, 1929.

HON. H. H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—There was recently submitted to this department a communication over the signature of Herbert B. Briggs, State Architect and Engineer, submitting for my examination and approval a certain agreement in writing made and entered into by and between you as Director of the Department of Public Welfare and the Wooster Electric Company, whereby in consideration of the agreement of said company to furnish to the Department of Public Welfare electric current for pumping water and for construction purposes at the Institution for the Feeble-Minded in the village of Apple Creek, Ohio, for a period of one year, it is contracted and agreed that the Department of Public Welfare shall pay for said electric current at the rates therein designated and grant to said company the right, by way of license or permission, to construct a temporary power transmission line in and upon the grounds of said institution for the purpose of bringing said electric current to the point of use.

Upon an examination of the provisions of said agreement, I am of the opinion that the execution of a contract or agreement of this kind is within the general authority which you have as Director of the Department of Public Welfare; and with respect to this question, it may be observed that your power and authority to enter into an agreement of this kind is analogous to that possessed and exercised by the Director of the Department of Public Welfare with respect to railway switch