Finding the above bond to have been properly executed pursuant to the above statutory provisions, I have approved the same as to form and return it herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

100.

APPROVAL, NOTES OF COVENTRY TWP. RURAL SCHOOL DIST., SUMMIT COUNTY, OHIO—$8,000.00.

COLUMBUS, OHIO, February 2, 1933.

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

101.

STOCKHOLDERS' MEETING—NOTICE OF SUCH MUST BE GIVEN STOCKHOLDERS OF A BANK—ACTS OF DIRECTORS NOT DULY ELECTED ARE NOT SUBJECT TO COLLATERAL ATTACK.

SYLLABUS:

1. *The provisions of Section* 8623-44, *General Code, with respect to notice of stockholders' meetings to elect directors are mandatory and are applicable to banking corporations.*

2. *An action taken by the stockholders in the election of directors at a meeting held in violation of the mandatory requirements of the statute with respect to notice is invalid.*

3. *The validity of the acts of directors elected at a meeting of which statutory notice was not given, may not be questioned collaterally because of such irregularity.*

COLUMBUS, OHIO, February 3, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

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

> "I am informed that certain banks transacting business under the laws of this state by their regulations provide that notice of the time and object of the annual meeting shall be given by publication in some newspaper of general circulation in the county in which the particular bank is located.
>
> Section 8623-44 of the General Code of Ohio provides, in part, that 'Whenever shareholders are required or authorized to elect directors or to take any action at a meeting, either annual or special, a notice of the meeting shall be given in writing by the secretary,' etc.
>
> Section 8623-12 provides, in part, that 'A corporation may adopt a code of regulations for its government, the conduct of its affairs and

the management of its property and business, consistent with its articles and laws of the state,' etc. 'In particular, and without prejudice to the generality of the general authority the regulations may include provisions in respect to: the time and manner of calling and conducting annual or special meetings.'

In view of the provisions of the foregoing sections, I would appreciate your opinion as to whether or not in instances where notice of an annual meeting is given by publication in a newspaper only, are the directors elected at such meeting legally elected, and further, if at such meeting a vacancy created by the death of a director is filled by a vote of the shareholders present, is such director legally elected."

Section 710-52, General Code, relating to the incorporation of banks, provides as follows:

"Such corporation shall be created, organized, governed and conducted, and directors shall be chosen in all respects in the same manner as provided by law for corporations organized under the general incorporation laws of this state, in so far as the same shall not be inconsistent with the provisions of this act (G. C. §§710-1 to 710-189)."

In view of the fact that Sections 710-1, et seq., contain no provisions which are inconsistent with the General Corporation Act with respect to notice of the annual stockholders' meetings, it follows that the General Corporation Act is controlling as to this matter. In this respect, banking corporations are in the same category as building and loan associations. My predecessor held in an opinion rendered December 10, 1932, to the Superintendent of Building and Loan Associations, being Opinion No. 4803, that the written notice of annual stockholders' meetings of building and loan associations must be given in the manner provided by Section 8623-44, General Code, notwithstanding the fact that the constitution and by-laws of such associations provide when and where said meetings are to be held.

I concur in this last mentioned opinion of this office and it is therefore my opinion that the provisions of Section 8623-44, General Code, with respect to notice of stockholders' meetings to elect directors are mandatory and are applicable to banking corporations.

With respect to the provisions of Section 8623-12, General Code, this section is not in my judgment inconsistent with the provisions of Section 8623-44, nor does it authorize a corporation to provide in its code of regulations a manner of serving notice upon the stockholders of meetings other than as provided by Section 8623-44.

In view of my conclusion as to the mandatory requirement of written notice of stockholders' meetings of a bank, it becomes necessary to determine whether the directors to which you refer were legally elected. You particularly mention the election of one director at the meeting who was elected to fill a vacancy. The election of this particular director must stand or fall along with the election of any other directors at that meeting. In so far as the question here under consideration is concerned, they are all in the same category.

It is well established that the failure to give statutory notice of a meeting for the election of directors renders the election invalid. The text in Corpus

Juris, Vol. 14A, p. 51, in support of which numerous authorities are cited, is as follows:

> "Where the giving of notice of a meeting of the stockholders for the election of directors or trustees is required by statute, charter, or bylaw, a failure to give the notice required or a failure to give it for the required time or in the required mode renders the election of directors or trustees at such meeting illegal unless all the stockholders expressly waive the requirement or are present and consent to the holding of the election. This rule has been applied with such strictness that failure to notify one stockholder alone has been held sufficient to render a corporate election void."

It is my opinion that an action taken by the stockholders in the election of directors at a meeting held in violation of the mandatory requirements of the statute with respect to notice is invalid.

It should be observed, however, that the office of directors so elected may only be questioned in quo warranto proceedings. Their office may not be questioned collaterally. In *Chamberlain* vs. *Painesville & H. R. Co.,* 15 O. S. 225, where stockholders held an election of directors, without giving notice, as required by statute, it was held that the acts of such directors could not be questioned collaterally because of this failure of notice. See also *State* vs. *Burial Association,* 8 O. C. C. (N. S.) 233.

The text in 10 O. Jur. pp. 501, 502 is pertinent. The language is as follows:

> "Speaking generally, it may be said that, except as against stockholders who are not present either in person or by proxy, the validity of any action intro vires taken at a meeting of stockholders cannot be questioned on the ground that the meeting was not called in the prescribed manner, or because of some other informality or irregularity in the meeting; in other words, that the legality of an action taken at a stockholders' meeting is not open to collateral attack by third persons on the ground of any informality or irregularity. The whole purpose of notice of stockholders' meetings is to give stockholders the opportunity of making themselves part and parcel of the meeting, taking part in its deliberation and actions and to have a voice in whatever is done. The public are not interested in the notice in any shape or form whatsoever. The principle that notice may be waived is well settled; therefore, if no stockholder makes objection to the holding of a corporate meeting called upon notice given by the president of the corporation, instead of by the directors, and the board of directors elected at such office assume office by virtue of their election, the court will not, a year later, hear the complaint that the meeting was illegal because of informality in the calls. The corporation itself cannot deny the legality of an action taken at a stockliolders' meeting on the ground that no notice was given of the meeting, for the purpose of the law requiring notice is fully accomplished by the parties being either present or represented, without notice."

These principles are in harmony with the general weight of authority outside of Ohio. In 14A C. J., 63, it is said:

"Quo warranto is the proper remedy to try title to office in a private corporation. Subject to a few exceptions to be hereafter considered, the rule is of general application that all questions relating to the validity of the election of officers of a private corporation can, and should, be determined in proceedings at law.

"While the contrary has been held (Nebr.), the general rule is well settled in most jurisdictions that a court of equity has no power or jurisdiction to entertain a bill merely for the purpose of reviewing a corporate election; nor to oust parties in possession who claim to have been elected. The reason is that the remedy at law is usually adequate."

In view of the foregoing, it is my further opinion that the validity of the acts of directors elected at a meeting of which statutory notice was not given, may not be questioned collaterally because of such irregularity.

Respectfully,
JOHN W. BRICKER,
Attorney General.

102.

COUNTY LINES—PROPOSED CHANGE MUST BE AGREED TO BY MAJORITY OF ELECTORS OF EACH COUNTY AFFECTED.

SYLLABUS:

Under Sec. 30, Art. II of the Constitution, a law changing county lines shall not become effective until adopted as therein provided by the electors in each county affected, even though the aggregate vote cast in all such counties considered together might show a majority for such change.

COLUMBUS, OHIO, February 3, 1933.

HON. GEORGE N. GRAHAM, *Prosecuting Attorney, Canton, Ohio.*

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

"This office would like to have a formal opinion regarding the interpretation of Article 2, Section 30, of the Constitution of Ohio, which is partially in regard to changing county lines. Evidently, if the General Assembly passes the bill authorizing the change, it must be submitted to all the electors in each county concerned at the next general election.

You will note that Section 30 reads as follows:

"* * * before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, *and be adopted by a majority of all the electors voting at such elections, in each of said counties.*'

Does this mean that the total number of electors in each of the counties affected are taken as a whole, and that a majority thereof, if