

reasons I reach the conclusion that the term 'public roads' and the word 'highways' as used in Section 5537 and Section 6309-2, and cognate sections of the General Code, include the bridges over which such roads and highways pass."

Said opinion further points out that the State's share of the money derived from such taxes was appropriated by the 87th General Assembly to cover the cost of the maintenance and repair of roads and highways in the state system, and one of the items of said appropriation, as shown on page 47 of House Bill No. 502, reads:

"Bridge replacements (narrow and dangerous).....\$1,000,000.00."

which is some indication as to the legislative intent with reference to the general use that is to be made of such moneys.

While it must be conceded that the question is debatable, in view of the foregoing, I am compelled to the view that the conclusion reached by the Attorney General in the opinion of 1928, above referred to, is the most logical conclusion to be reached. It is the most logical view, considering highway utility, which may be adopted in arriving at the intent of the Legislature. As pointed out in said opinion, it is just as essential, and probably more so, to have bridges in safe condition as it is to have the highway in proper condition.

Based upon the foregoing, you are specifically advised that it is my opinion that:

1. The moneys allotted to a municipality under the provisions of Sections 5537 and 6309-2 of the General Code, may legally be expended for the purpose of maintaining and repairing bridges and viaducts upon streets within the municipality. (Opinion, Attorney General, 1924, page 335, overruled.)

2. County commissioners may legally expend the county's portion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways.

Respectfully,

GILBERT BETTMAN,

Attorney General.

102.

CORPORATION—OFFICERS—FILING OF CERTIFICATES WITH SECRETARY OF STATE UNDER SECTION 8623-16, GENERAL CODE—WHEN REQUIRED

SYLLABUS:

The requirement of the filing in the office of the Secretary of State of a certificate as provided for in Section 8623-16, General Code, refers only to the issuance of par value shares of a corporation for an amount of consideration less than the par value thereof and has no application to the issuance of par value shares at par or at a price greater than par.

COLUMBUS, OHIO, February 16, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your letter of recent date with which is enclosed a certificate to be filed under the provisions of Section 8623-16, General Code. It appears that this certificate has been submitted to you following the issuance of par value shares of The H. Brothers Company for an amount of consideration more than the par value thereof.

You inquire as to whether or not Section 8623-16, General Code, requires the filing of a certificate, as provided for therein, in case par value shares are issued for an amount of consideration of the par value thereof or at a price greater than par.

Section 8623-16 of the General Code is part of the general corporation act. This section provides:

"Shares with par value may be issued for an amount of consideration not less than the par value thereof except as herein otherwise provided. The board of directors may authorize the issuance of shares with par value at a price greater than par.

A corporation by action of its board of directors may issue and sell shares having par value or securities convertible into shares having par value, or give options to purchase shares having par value, for an amount of consideration less than the par value of such shares or of such shares as may be issued upon the conversion of such securities or exercise of such options if

- (1) The corporation has been in existence more than two years; and
- (2) The board of directors shall find that such shares cannot be sold at par; and
- (3) The board of directors shall fix a price for such shares at less than par and cause them to be offered to existing shareholders at such price; and
- (4) All of the shares so offered shall not have been purchased by existing shareholders.

Whereupon such unpurchased shares may be issued and sold at not less than the price at which such shares were offered to shareholders, less reasonable compensation for the sale or underwriting of such shares; or securities convertible into such shares may be issued and sold and the price of such shares on conversion may be fixed at an amount equal to or greater than the price at which such shares were offered to shareholders; or options may be given for such time and on such conditions as may be stated, to purchase such shares at a price not less than that at which such shares were offered to shareholders.

Within sixty days after any such sale or issuance of securities, the president, or vice-president, and the secretary, or an assistant secretary, of the corporation shall file in the office of the secretary of State a certificate verified by their oath, stating the name of the corporation, its principal office, the number, class and par amount of shares so sold, and/or a description of any option rights and/or convertible securities or securities accompanied by option rights so sold with the number, class and par amount of shares to be issued on conversion thereof or on exercise of option rights; the price at which shares were offered to shareholders; and that all of the provisions of this section have been complied with.

Upon sale of such shares or issue of shares, upon conversion of such securities, or exercise of such option rights, the corporation shall include the par amount of such shares in its stated capital.

The word 'securities' as used in this section shall include obligations and shares of the corporation."

Section 8623-19, General Code, provides as follows:

"The board of directors shall have authority, subject to such limitations as may be imposed by the articles, to cause the shares described in the articles to be issued at such time or times as it may determine."

There is here made provision for the general issuance of shares and authority given to the Board of Directors.

Section 8623-16, *supra*, refers only to the issuance of par value shares and states at the outset that shares with par value may be issued for an amount of consideration not less than the par value thereof, *except as herein otherwise provided*. There follows in the first paragraph of this section an authorization for the issuance of shares with par value at a price greater than par by the board of directors.

The second paragraph prescribes an exception to this provision that par value shares may not be issued for an amount of consideration less than par and imposes four qualifications which must be met prior to such issuance. The fourth qualification is that the shares so offered (at less than par) shall not have been purchased by existing shareholders.

The third paragraph of this section provides for the issuance and sale of such unpurchased shares.

The fourth paragraph provides that within sixty days after *such* sale or issuance of securities, there shall be filed in the office of the Secretary of State a certificate as therein required.

A careful consideration of the wording of this section leads me to conclude that the portion providing for the filing of a certificate in the office of the Secretary of State has reference only to the case of the issuance of par value shares for an amount of consideration less than the par value thereof. There is manifestly no requirement here for the filing of such certificate each and every time par value shares are issued by a corporation at par or a price greater than par.

I am, therefore, of the opinion that the filing of a certificate in the office of the Secretary of State, as provided in Section 8623-16, is only required when par value shares are issued for an amount of consideration less than the par value thereof:

Respectfully,

GILBERT BETTMAN,

Attorney General.

103.

APPROVAL, NOTES OF RIDGEVILLE TOWNSHIP RURAL SCHOOL DISTRICT, LORAIN COUNTY—\$60,000.00.

COLUMBUS, OHIO, February 18, 1929.

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

104.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ALLEN AND ASHLAND COUNTIES.

COLUMBUS, OHIO, February 18, 1929.

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