"Where the names of several persons are grouped together upon the ballots as candidates for the same office, the ballot shall contain, immediately above the names of such candidates the words "Vote for not more than ————" (filling the blank space with the number of persons who may lawfully be elected to such office)."

It was held in the case of *State ex rel.* vs. *Chambers,* 20 O. S. 336, as follows:

"A designation made upon the ballot by the electors of the term of the person voted for, in case such election might be for either of two terms, cannot be ignored by the election officers."

In the case of *State ex rel. O'Donnell,* etc., vs. *Adam Schafer et al.,* 10 C. D., page 36, the first branch of the headnote is as follows:

"Where three members are to be elected to the board of education, two of them for the full term of three years and one to fill an unexpired term of one year, and the names of six candidates appear on the ballots, but with nothing to indicate which are candidates for the long terms and which for the short term, there is no valid election, and the old board holds over, even though one set of candidates were regularly nominated at a party caucus as candidates for the different terms and properly certified to the board of elections."

Answering your two questions specifically, it is therefore my opinion that:

1. A person desiring to become a candidate for the unexpired term of county commissioner, is required to file a certificate of nomination with his declaration of candidacy stating that he is a candidate for the "unexpired term" which he seeks.

2. In case there are candidates for the office of county commissioner for both the full term and the unexpired term, it will be necessary for the Board of Deputy State Supervisors of Elections to have proper designation immediately above the names of such candidates for the full term "Vote for not more than ———— for the full term of four years" (filling the blank space with the number of persons who may lawfully be elected to fill such office).

3. It will also be necessary for the Board of Deputy State Supervisors of Elections to place immediately above the names of such candidates for the unexpired term "Vote for not more than one for the unexpired term."

Respectfully,
EDWARD C. TURNER,
Attorney General.

1782.

FEES—PAID BY CORPORATION FOR FILING AND RECORDING A CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION INCREASING THE NUMBER OF SHARES—SECTION 176, GENERAL CODE DISCUSSED.

SYLLABUS:

The fee to be paid by a corporation for filing and recording a certificate of amendment of its articles of incorporation increasing the number of shares which the

corporation shall be authorized to issue should be paid at the scale provided in Section 176 of the General Code, on the number of shares authorized by such certificate of amendment, irrespective of the number of shares which the corporation was previously authorized to issue.

COLUMBUS, OHIO, February 29, 1928.

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

DEAR SIR:—This will acknowledge your recent letter as follows:

> "There has been submitted to me for filing by L. & G. Attorneys, of C. an amendment to the articles of The A. I. Inc., which seeks to authorize an increase in the company's capital shares from 2500 shares at $100 to 50,000 shares no par stock.
>
> In submitting the amendment the attorneys for the company offered the company's check in the sum of $2750 with the following comment:
>
> '* * We find that your office figures the fee to be $2875.00, or calculated on the basis of 10,000 shares at 10 cents per share, and 37,500 shares at 5 cents per share, making a total of $2875.00—in other words, no credit is given for the 2500 shares that are already authorized. Our calculation of the fee to be charged would be on the basis of 7500 shares at the rate of 10 cents per share, and 40,000 shares on the basis of 5 cents per share, making a total of $2750.00.'
>
> The letter also included a request that the matter be referred to your department for opinion and we understand that a copy of the letter referred to is already in the hands of your Mr. L.
>
> Attached to the letter of transmittal above referred to the attorneys for the company have submitted certain citations which we forward herewith."

As is indicated by your letter and by a further communication which I have received from the attorneys in question, the sole point of controversy is whether or not in the determination of the fee to be paid on the filing of a certificate of amendment increasing the authorized number of shares, consideration should be given to the already existing number of shares which the corporation is authorized to issue. In their letter the attorneys point out that

> "if two corporations are formed, one with an initial capital stock of 100,000 authorized shares, and the other with an initial authorized capital stock of 50,000 shares, and if the second corporation should decide to increase its capital stock at the rate of 10,000 shares at a time the fees which it would be required to pay, would be $8,000.00, whereas if the corporation started with an initial issue of 100,000 shares, the fee would only be $4500.00."

The computation which has been presented by the attorneys is correct and the necessary conclusion therefrom is that two corporations may have the same present authorized number of shares, although to secure the authority to issue such shares they may have been compelled to pay substantially different amounts. The difference in amounts would, of course, result from a different course of procedure in securing the authority for the issuance of the aggregate number of shares.

The question before me is, therefore, whether the Legislature intended to create such a result. Section 176 of the General Code, as amended in 112 O. L. at page 258, reads in part as follows:

"The secretary of state shall charge and collect the following fees for official services:

* * * * * * * * * *

2. For filing and recording a certificate of amendment increasing the number of shares which a corporation shall be authorized to issue,

A fee equal to the sum of

(a) Ten cents for each share authorized up to and including ten thousand shares;

(b) Five cents for each share authorized in excess of ten thousand shares up to and including fifty thousand shares;

(c) Three cents for each share authorized in excess of fifty thousand shares up to and including one hundred thousand shares;

(d) Two cents for each share authorized in excess of one hundred thousand shares up to and including one hundred and fifty thousand shares;

(e) One cent for each share in excess of one hundred and fifty thousand shares.

In no event, however, shall the fee be less than twenty-five dollars.

* * * * * * * * * * *"

In my opinion the only reasonable interpretation of this language is that a fee of ten cents for each share authorized *by the certificate of amendment* up to and including ten thousand shares must be paid. If the Legislature had intended to include in this computation the amount of shares originally authorized, it could readily have so stated. The language appears to me to be clear and unambiguous and I am unable to reach any other conclusion.

It may be well in this connection to point out that in my opinion No. 1777, dated February 4, 1928, after quoting the portion of Section 176 of the Code heretofore quoted, is found the following language:

> "This section is likewise in my opinion only susceptible of one interpretation and that is, that the fee shall be payable at the rate of ten cents for each share up to and including ten thousand shares of the increase, irrespective of the existing capitalization of the company. It is reasonable to assume that the Legislature intended placing domestic and foreign corporations upon a parity and I am of the opinion that the two sections should be construed together in view of the similarity of their language."

In that opinion there was under consideration the similar provision of Section 185 of the Code in relation to the fees to be paid by a foreign corporation. That section clearly provided that the fee was payable at the scale set forth upon the increase alone and without regard to the previous authority of the corporation. As stated in the language above quoted, it is reasonable to assume that the Legislature intended to place domestic and foreign corporations upon a parity.

I am, therefore, of the opinion that the fee to be paid by a corporation for filing and recording a certificate of amendment of its articles of incorporation increasing the number of shares which the corporation shall be authorized to issue should be paid at the scale provided in Section 176 of the General Code on the number of shares authorized by such certificate of amendment, irrespective of the number of shares which the corporation was previously authorized to issue.

Respectfully,
EDWARD C. TURNER,
Attorney General.