By personal interview I am informed that the employer in question has provided and equipped a school room and offers it to the board of education of the city of Cleveland for its use in connection with its vocational activities.

It is quite apparent from the statement of policy of the Federal Board that instruction in Vocational Education and training may be carried on in a school building, in a shop or in a class room adjoining a shop, or a building near a shop, or elsewhere. Said work, however, must be under the direction and control of the board of education, and must be open to all who wish to avail themselves of the instruction given therein. No one could be refused admittance thereto because of his membership or non-membership in any organization.

It is therefore my opinion that the State Board of Vocational Education is authorized to expend funds allotted to the State of Ohio by the Federal Government for vocational educational purposes, and also funds appropriated by the Legislature of Ohio for the same purpose, for the promotion of vocational education as a part of the public school system of the State. In so doing, it has authority to provide and pay public school teachers for the teaching of vocational subjects to classes conducted as part-time classes for persons who have entered upon employment as defined by Section 11 of the Act of Congress of 1917, U. S. C., page 609, at shops, in class rooms, adjoining such shops, in buildings near such shops, or elsewhere.

Respectfully,
EDWARD C. TURNER,
Attorney General.

772.

GENERAL CORPORATION ACT—ITS EFFECT ON PENDING LEGISLATION.

SYLLABUS:

New general corporation act considered with relation to its effect upon pending corporate action.

COLUMBUS, OHIO, July 25, 1927.

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

DEAR SIR:—This will acknowledge receipt of your recent communication in which you ask several questions with relation to the effect of the new general corporation act upon various corporate proceedings pending at the time of the effective date of that act.

Preliminary to a consideration of the specific questions, I direct attention to section 26 of the General Code of Ohio, which is as follows:

> "Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

The effect of this section is to preserve pending actions, prosecutions and proceedings instituted under old statutes and permit of their completion in spite of the amendment or repeal of the sections under which they were instituted. In fact it may be said that this section is a general saving clause applicable in every case unless express provision to the contrary is found in the amending or repealing act.

I also call your attention to Section 136 of the general corporation act, the language of which is as follows:

> "This act shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed."

This section must be construed as modifying the language of the preceding section, which provides:

> "Other corporations now existing or hereafter formed shall be subject to the provisions of this act."

Section 136 of the general corporation act is manifestly a specific saving clause inserted for the purpose of permitting the transition from the old corporation code to the new act to be effected smoothly and without undue disruption of corporate matters. This section and Section 26 of the General Code are in *pari materia* and should be construed together.

In considering the questions which you present, the important parts of Section 136, above quoted, are those which provide that the general corporation act shall not affect or impair any act done or right accruing, accrued or acquired, but that they shall be enjoyed and asserted as fully and to the same extent as if the act had not been passed.

It is somewhat difficult to define with any accuracy just what a right accruing, accrued or acquired is, within the meaning of this section, and it becomes necessary to examine the specific situation in order to determine whether or not the facts come within the spirit and meaning of the language used. In the interpretation of this language, however, I deem it unnecessary to apply the rule of strict construction. Thus the provisions of Section 26 of the General Code have been construed by the Supreme Court as applicable to the various steps in council with respect to a street improvement, which is held to be a "proceeding" within the meaning of this section.

> Cincinnati vs. Davis, 58 O. S. 225.
> Raymond vs. Cleveland, 42 O. S. 522.

The erection of a court house has also been held to be a proceeding within the meaning of this section.

> State vs. Cass, 13 C. C. (N. S.) 449.

The first question which you ask is substantially as follows:

> Where an Ohio corporation has filed its articles of incorporation prior to the effective date of the new act, which articles provide for all par stock, is it necessary for the corporation, after the effective date of the act, to file the usual certificate of subscription to its capital stock?

Corporations with par stock were required to file articles of incorporation under the old law by Section 8625, General Code, the articles containing the following:

"1. The name of the corporation, which, unless it is not for profit, may begin with the word 'the' and shall end with the word 'company,' 'corporation,' 'incorporated,' or 'inc.', except as otherwise provided by law.

2. The place where it is to be located or its principal business transacted.

3. The purpose for which it is formed.

4. The amount of its capital stock, if it is to have capital stock, and the number of shares into which it is divided.

5. But, if the corporation is for a purpose which includes the construction of an improvement not to be located at a single place, the articles of incorporation must also set forth—

a. The kind of improvement intended to be constructed.

b. Its termini, and the counties in or through which it or its branches will pass."

The filing of these articles, however, did not of itself authorize the corporation immediately to enter into business. The subsequent sections provided for the opening of books of subscription and required the payment of ten per cent of each subscription at the time of the subscription.

Section 8633 of the General Code provided for the filing of a certificate of subscription showing that at least ten per cent of the capital stock had been subscribed. The succeeding section made the incorporators liable for any deficiency in the actual payment of the ten per cent on the stock subscribed for at the time of the filing of the certificate. Not until this certificate had been made were the incorporators authorized to proceed by holding an election of directors. Under the new corporation act the contents of the articles of incorporation are set forth in Section 4 in the following language:

"1. The name of the corporation, which may begin with the word 'the' and shall end with or include the word 'company,' 'corporation,' 'incorporated,' or 'inc.', except as otherwise provided by law.

2. The place in this state where the principal office of the corporation is to be located.

3. The purpose or purposes for which it is formed.

4. The maximum number and the par value of shares with par value, and the maximum number of shares without par value which the corporation is authorized to have outstanding; and if the shares are to be classified, the number and par value, if any, of the shares of each class and all the designations preferences, conversion rights, voting powers, redemption rights and other relative rights or restrictions or qualifications of each class, all of which are hereinafter sometimes designated 'terms and provisions'.

The dividend rate on shares of any class or the amount payable for shares of any class on redemption of such shares or on the dissolution liquidation, consolidation or sale of the entire assets of the corporation, shall be sufficiently stated if a maximum rate or amount is stated and, if subject to such maximum, the board of directors is authorized by the articles to fix or alter such rate or amount from time to time before the issuance of such shares.

5. The amount of capital with which the corporation will begin business, which shall be not less than five hundred dollars.

6. If desired, the amount of consideration for which subscriptions to shares without par value may be received by the incorporators, and the valuation of any consideration to be received for shares either with or without par value proposed to be presently issued.

7. Any lawful provision which may be desired for the purpose of defining, limiting and regulating the exercise of the authority of the corporation or of the directors or of the shareholders or of any class of shareholders, or for the purpose of creating and defining rights and privileges of the shareholders among themselves. Any provision authorized to be made in the regulation of a corporation may, if desired, be made in its articles."

You will note that the provisions of this section are applicable to corporations with par value shares and shares without par value alike. It should also be observed that the amount of capital with which the corporation will begin business must be stated. This is an added requirement which was not present in Section 8625 of the General Code. By the later provisions of the new act the incorporators are authorized to call a meeting of the share holders to elect a board of directors and adopt regulations whenever subscriptions have been received in an amount at least equal to the capital stated in the articles as that with which the corporation will begin business, and it is further provided that the corporation shall not commence business until this amount has been actually paid in. No certificate of subscription need be filed under the new act.

In the instance which you present, the articles of incorporation, having been filed pursuant to Section 8625 of the General Code, as heretofore existing, contain no statement as to capital. Under the law as it then stood, the incorporators had a right to proceed to open books for subscriptions, and after receiving subscriptions to the required amount, they could so certify to the secretary of state and become authorized to do business as a corporation. It seems to me that this is one of the rights accruing or accrued covered by the saving clause found in Section 136 of the new act. As the corporation stands, there exists no right to do business. That right is contingent upon the filing of the certificate and the right is preserved by the express provisions of Section 136. I am therefore of the opinion that the corporation in question whose articles were filed prior to the effective date of the new corporation act, should proceed to file a certificate of subscription under the provisions of the old code before holding a meeting of the stockholders for the election of a board of directors and the adoption of regulations prior to engaging in business.

I call your attention, however, to the provisions of Section 15 of the new corporation act, permitting the amendment of articles before any subscriptions to shares have been received by the filing of the amendment by all of the incorporators. It is suggested that in the case you present the incorporators might choose to proceed by this method, that is to say, the old articles might be amended so as to conform to the requirements of the new act by the insertion of a provision as to stated capital. Such an amendment would, in my opinion, effectively render unnecessary the filing of a certificate of subscription and would authorize the incorporators to proceed with the organization of the corporation in the manner provided in the new act.

Your second question is substantially as follows:

Where articles of incorporation, providing for no par common stock, have been filed under the old law, will it be necessary to file both certificates of subscription and of payment or will the fact that the articles of incorporation as filed carry a common capital clause be deemed to be the equivalent of the present requirement as to stated capital?

Under the old law corporations formed with shares of common stock without nominal or par value were required in the articles of incorporation to state in addition to the requirements found in Section 8625, the following:

> "(a) The total number of authorized shares which may be issued by the corporation, and the classes, if any, into which such shares are divided, the number of shares of each class and, if any such shares be preferred stock, the terms and provisions thereof and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars.
>
> (b) The amount of common capital with which the corporation will begin to carry on business, which shall not be less than $500.00."

This additional information was necessitated by the provisions of Section 8728-1. The section further provided for the opening of books of subscription. The succeeding section required a certificate to the secretary of state as to the subscription to the capital stock and a further certificate that the amount of common capital stated in the articles of incorporation had been fully paid in.

The discussion of your first question is also applicable to this question unless, as you suggest, the statement of "common capital" required by Section 8728-1 may be regarded as the equivalent of the statement required by the fifth clause of section 4 of the new act above quoted. The only distinction that I can make between the two kinds of capital is that, under the old act, this capital was obtainable solely from the sale of no par common stock. In other words, in order that a certificate might be filed under the old act, it was necessary that the amount of common capital be paid in from subscriptions to the common stock and the directors, by the terms of Section 8728-2, were made liable for any debt contracted in violation of the section. As I interpret the new act, the amount of capital may be derived from the sale of any class of shares, but the same liability exists for proceeding to do business without payment having actually been made. This liability is asserted by Section 121 of the new act. The provision in each instance for a statement of the capital with which the corporation will commence business is the same. It is an assurance on the part of those responsible for the corporation that business will not be commenced until the amount specified has actually been received. I can see no essential difference whether this statement be made in articles of incorporation filed under the old act or under the new. The assurance to those dealing with the corporation is the same. I have therefore reached the conclusion that the statement of common capital made in articles of incorporation filed prior to the effective date of the new act, may properly be considered as the equivalent of the statement required by the provisions of Section 4 of the new act and consequently it is unnecessary to file the additional certificates of subscription and payment formerly required, but rendered unnecessary under the laws that now exist. In my opinion the statement of the common capital is a substantial compliance with the new law and the incorporators may proceed to effect the organization in the manner provided in the new general corporation act.

Your representatives have also asked me to indicate my views as to the proper procedure to be followed by your office where all the required action contemplated by the old law had in fact been taken prior to the effective date of the new law but the certificates of such action required to be filed with the secretary of state had not been received. They also ask whether in such a case the old or new form of certificates should be required.

The question is so indefinite that it is difficult to arrive at a specific conclusion. Without having any definite case before me, I am of the opinion that where a procedure

under the old law has been completed with the exception of the filing of the evidence thereof with the secretary of state, clearly the provisions of Section 136 of the new corporation act permit the preservation of the rights accruing by virtue of such action and authorize the filing of certificates thereof even after the effective date of the new act. The certificates so filed should be in exact accordance with the facts. Without having the forms before me and a specific case presented, I am unable to conclude whether there is any essential difference in the facts set forth in the certificate between the old form and the new. It is of course apparent there will be a difference in the marginal notes with reference to the section numbers of the General Code, but the substance of the certificate might well in certain instances be the same. At all events, I am convinced that the certificate in each instance should include the actual corporate steps taken and, if this precludes the use of the new form, the certificate should be made upon the old form, permitting of a true statement of the action to which the certificate applies.

A more difficult situation is presented where certain corporate steps are not completed except for the filing of the certificate thereof, but are in progress at the time of the effective date of the new act. It is impossible to lay down any general rule which will be applicable to all cases. A situation might arise where publication or service of notice of a meeting for a specific purpose had been undertaken under the provisions of the old act but the meeting was not actually held until after the new act became effective. In such an event, I am of the opinion that the publication of notice having been commenced prior to the effective date of the new act, and being in compliance with the provisions of law then in effect, would be sufficient. Whether, however, the action taken at the meeting should be governed by the new law is a question which is impossible to decide without having a specific case before me. In many instances certain steps heretofore authorized are no longer permitted and, conversely, certain things may now be done which were not permissible under the old code. It is also to be noted in many cases a different percentage of the vote of the stockholders is required for corporate acts under the new code than was required heretofore. In certain of these instances, it would not appear to be reasonable to conclude that the mere calling of a meeting for a purpose would justify the accomplishment of that purpose after the statute authorizing such action had been repealed. Nor would it appear to be proper to hold that formal action taken after the effective date of the new act and authorized by the required percentage of votes as prescribed by that act would be ineffective because the old statutory requirement was otherwise and the notice of the meeting at which the action was had was commenced prior to the effective date of the act.

You will observe that I am hesitant about setting forth any general rules applicable to all cases. The questions propounded by your representatives were so broad in their scope that I find it impossible to give consideration to them all without having the specific case before me. It is therefore my suggestion that you refer to me any specific case concerning which you are in doubt.

Respectfully,
EDWARD C. TURNER,
Attorney General.