

Specifically answering your question I am of the opinion that there is no authority for, and no occasion for "B" District reimbursing "A" District for money received by the said "B" District from the county educational equalization fund on account of the aggregate days of attendance of pupils from "A" District who are attending school in "B" District.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1897.

CORPORATION—AMENDMENT OF ARTICLES OF CORPORATION FOR
PROFIT TO ONE OF NOT FOR PROFIT—WHAT AMENDMENT
SHALL INCLUDE.

SYLLABUS:

1. *Where the purpose or purposes of a corporation, purporting to be one for profit, whether they be the original purpose or purposes or as changed by amendment, clearly set forth a purpose or purposes which are not only evidently that of a corporation not for profit, but which preclude the exercise of any purpose for profit and which corporation has acted solely as a corporation not for profit, its articles may be amended and may set forth that it is, in fact, a corporation not for profit.*

2. *When such an amendment is sought to be made, the amendment should also provide for the elimination of all provisions in the articles relating to capital stock and the issuance of shares of the corporation, and all outstanding shares should first be surrendered to the company and cancelled.*

COLUMBUS, OHIO, November 22, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads in part as follows:

"Your opinion is respectfully requested, first, as to whether or not a corporation organized for profit, whose articles contain a purpose which clearly sets forth a purpose of a corporation not for profit but contains no statement which would preclude the corporation from making a profit, and whose shareholders do not by agreement waive their rights to receive dividends, and whose shareholders do not agree that their shares should revert to the company upon their death, may by amendment change the corporation from one for profit to one not for profit. Second, whether the fact that the limitation contained in section 8623-14 as enacted in 112 O. L., upon which section earlier opinion was based, which stated that no amendment shall be filed substantially changing the purpose or purposes for which a corporation were formed is missing in section 8623-14 as is now in effect, would have any bearing on your opinion.

In the event your opinion should be that such amendments are not permitted, your further opinion is respectfully requested as to status of corporations which were permitted to file amendments effecting such change.

Should your opinion be that amendments effecting the change are permitted, what would be the status of shares of such corporations issued and outstanding, subsequent to such amendments. * * *

In Opinions of the Attorney General for 1929, Vol. I, page 233, the following was held:

"When articles of a corporation have been filed in the office of the Secretary of State, purporting to be a corporation for profit, but which contain a purpose clause which clearly sets forth a purpose which is not only evidently that of a corporation not for profit, but which precludes the exercise of any purpose for profit and which corporation has, pursuant to such organization, acted solely as a corporation not for profit, its articles may be amended to eliminate such contradictory statements and set forth that it is, in fact, a corporation not for profit."

The stockholders of the corporation referred to in that opinion waived their rights to receive dividends and agreed that their shares should revert to the company upon their death. Since the rendition of that opinion, the powers of amendment have been broadened and a corporation may now even change its purpose or purposes. Section 8623-14, General Code. This section makes the following limitation upon the power to amend:

"* * * provided, that only such provisions shall be included or omitted by amendment as it would be lawful to include in or omit from original articles filed at the time of making such amendment or effect changes of shares as hereinafter provided for."

Section 8623-102, General Code, reads in part as follows:

"A corporation not for profit hereafter organized shall not issue certificates for shares to evidence interest in its property or otherwise."

Since a corporation for profit provides for the issuance of certificates of shares, an amendment simply providing for a change to a non-profit corporation could not be made because at the time of making such an amendment such a provision could not be included in the original articles as the issuance of certificates of shares would be authorized contrary to section 8623-102, General Code. Consequently, before a corporation for profit can be changed by amendment to a corporation not for profit, all outstanding shares would have to be surrendered to the company and cancelled, and such amendment should also eliminate all provisions relating to capital stock and the issuance of shares.

I am of the opinion therefore that where the purpose or purposes of a corporation, purporting to be one for profit, whether they be the original purpose or purposes or as changed by amendment, clearly set forth a purpose or purposes which are not only evidently that of a corporation not for profit, but which pre-

clude the exercise of any purpose for profit and which corporation has acted solely as a corporation not for profit, its articles may be amended and may set forth that it is, in fact, a corporation not for profit.

When such an amendment is sought to be made, the amendment should also provide for the elimination of all provisions in the articles relating to capital stock and the issuance of shares of the corporation, and all outstanding shares should first be surrendered to the company and cancelled.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1898.

APPROVAL, PETITION TO AMEND ARTICLE XV OF THE CONSTITUTION OF OHIO.

COLUMBUS, OHIO, November 22, 1933.

HON. CHARLES H. HUBBELL, *Cleveland, Ohio.*

DEAR SIR:—You have submitted for my examination a written petition signed by one hundred qualified electors of this state, containing a measure to be referred and a summary of the same, under the provisions of Section 4785-175, General Code.

It is proposed to amend Article XV of the Constitution of Ohio by adopting a new section to be known as section 9 and to read as follows:

“It shall be lawful to sell or to offer for sale intoxicating liquor, or to keep, maintain or operate a hotel, inn, tavern, house, room or place where intoxicating liquor is sold or offered for sale, provided that, within the preceding twelve months, the judge of the probate court, in his sole and absolute discretion, shall have granted a license therefor and provided such license shall not have been revoked or cancelled.

It shall be unlawful to sell or to offer for sale any intoxicating liquor, or to keep, maintain or operate any hotel, inn, tavern, house, room or place where any intoxicating liquor is sold or offered for sale, unless, within the preceding twelve months, the judge of the probate court, in his sole and absolute discretion, shall have granted a license therefor and unless such license shall be unrevoked and uncancelled; excepting that no license shall be required by the seller for the sale of intoxicating liquor at wholesale to any buyer to whom a license shall have been granted or transferred, provided the license of said buyer shall not have expired or been revoked or cancelled.

Excepting as hereinafter in this section provided, no license shall be granted or transferred to any person other than a citizen of the United States of temperate habits and good moral character.

No license shall be granted or transferred to any person who holds any public office, and any license shall immediately become void and be revoked and cancelled if the person to whom it is granted or transferred