light, air, protection from fire, suitable surroundings, ingress and egress, it is necessary, under the provisions of section 2293-6 of the General Code, to secure authority therefor by a vote of the electors, in the event that the amount thereof exceeds twenty thousand dollars.

I note, however, that you also ask whether a purchase of this character can be made without a bond issue.

Section 2293-16 of the General Code, to which I have referred, is a limitation solely on the authority to issue bonds. In the event that there are available sufficient funds to acquire the real estate in question without the necessity of issuing bonds, the county commissioners may proceed under authority of section 2433 without submitting the matter to a vote of the electors. This is, however, as I have said, contingent upon the availability of sufficient funds from sources other than a bond issue and such authority may not be exercised until after the effective date of House Bill No. 1.

Respectfully,
EDWARD C. TURNER,
Attorney General.

719.

GENERAL CORPORATION ACT—ISSUANCE OF SHARES WITHOUT PAR VALUE—POWER OF INCORPORATORS UNDER SECTION 4 OF ACT.

SYLLABUS:

Under the provisions of Section 17 of the new general corporation act, shares without par value may be issued from time to time for varying amounts of consideration, which amounts are to be determined in any one of the methods provided in sub-paragraph (b) of such section, provided that all shares of the same class authorized by the board of directors to be issued at the same time, shall be issued for the same amount. The incorporators may, under Section 4 of the new general corporation act, provide in the articles of incorporation that all shares without par value shall be issued at a fixed amount and such specific provision in the articles would preclude any change in the amount of consideration to be received without an amendment of the articles permitting such change.

COLUMBUS, OHIO, July 11, 1927.

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

DEAR SIR:—This will acknowledge receipt of your recent communication in which you enclose copy of letter received from attorneys, which is as follows:

> "Sub-paragraph (b) of Section 17 of the new corporation code provides that the amount of consideration for each share shall be equal in respect of all shares of the same class 'authorized to be issued at the same time.' Section 4 provides that the Articles shall contain the maximum number of shares which the corporation 'is authorized to have outstanding.' Section 19 provides, 'The Board of Directors shall have authority * * * to cause the shares described in the Articles to be issued at such time or times as it may determine.'
>
> If the above quoted words from Section 17 mean that out of any maximum number of shares stipulated in the Articles such shares as the Directors may authorize to be issued at any particular time shall all be issued for the

same amount, the purpose and benefit of the provision is apparent. If the above quoted words mean that an entire authorization of any class of stock must be sold at one price, then such provision is in conflict with the spirit of many other provisions of the act and destroys one of the chief factors of value of no par stock.

Will you please advise what is the correct construction of the above quoted words from Section 17?"

You ask that I give you my opinion as to the construction to be placed on the provisions of Section 17 of the new corporation act referred to in this letter.

Section 17 of the corporation act is as follows:

"Shares without par value may be issued:

(a) Pursuant to subscriptions taken by the incorporators, for such amount of consideration as may be specified in the articles, or if none is specified, for such amount of consideration as may be specified by the incorporators;

(b) At any time or from time to time after organization, for such amount of consideration for each share (which amount shall be equal in respect of all the shares of the same class authorized to be issued at the same time) as may be fixed by the affirmative vote of the holders of a majority of the outstanding shares of the class to be issued, and by a like vote of the holders of shares of each class junior thereto (regardless of limitations or restrictions on the voting power of any such classes) or by the board of directors when authorized by a like vote of the shareholders or by the articles, or if no shares of the class to be issued are outstanding and there are no shares junior thereto then for such amount of consideration for each share as may be fixed by the board of directors."

Section 19 of the act is in the following language:

"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."

As stated by the attorneys in their letter, Section 4 requires the statement of the maximum number of shares without par value which the corporation is authorized to have outstanding. I do not believe, however, that it was contemplated that all of these shares should be issued at once. The obvious purpose of Section 19 is to authorize the Board of Directors to cause the shares described in the articles to be issued at such time or times as the board may determine.

The specific question, however, is as to whether the words "which amount shall be equal in respect of all the shares of the same class authorized to be issued at the same time" have reference to the authority conferred by the filing of the articles of incorporation or to the authority conferred upon the board of directors by Section 19. I regard it as very apparent that the word "authorized" refers to the authority of the board and not to the authority of the corporation as set forth in Section 4.

One of the most important features recommending the use of no par stock is that it permits a flexibility so that shares may be issued from time to time for different amounts, as the changing condition of the company may demand. To hold that the total number of no par shares must be sold at a price fixed at the time of incorporation would be to defeat the purpose of the no par share provision and, as stated by the attorneys in the letter quoted, destroy one of the chief factors of value of such shares.

I therefore have no difficulty in reaching the conclusion that the provision for equality contained in sub-paragraph (b) of Section 17 is limited to equality as to any

particular issue authorized by the board of directors and that the consideration for subsequent issues may be such as may be determined in any one of the methods prescribed by that sub-paragraph. This is, of course, subject to the limitation that the articles of incorporation may, under sub-paragraph (a) of Section 17, make specific provision that all of the non par shares shall be issued at a fixed valuation. Such a limitation would, in my opinion, be permissible and authorized by the general terms of Section 4. I believe, however, that sub-paragraph 6 of Section 4 has reference particularly to the amount of consideration for which original subscriptions to shares without par value may be received and that a provision for amount so incorporated would ordinarily apply only to the subscriptions incident to the organization of the company and would not be binding as to subsequent issues within the maximum number prescribed by the articles. Thereafter, the amount of consideration may be fixed in accordance with the provisions of sub-paragraph (b) of Section 17.

Respectfully,
EDWARD C. TURNER,
Attorney General.

720.

OFFICES—MEMBER OF MUNICIPAL FIRE DEPARTMENT NOT DISQUALIFIED FROM BEING ELECTED COUNCILMAN—CANNOT RECEIVE PRIVILEGES OR EMOLUMENTS OF FIREMAN.

SYLLABUS:

Membership in a municipal fire department does not disqualify such a fireman from being elected to the office of councilman of the municipality, and if after being elected councilman and accepting the position and qualifying for the same such person should continue to perform the duties of a fireman, that fact would not in and of itself operate to cause a forfeiture of his office as councilman but would serve only to disqualify him from receiving the privileges or emoluments of the position of fireman.

COLUMBUS, OHIO, July, 11, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your communication in which you set out certain data with reference to the relation existing between certain members of the city council of the city of Martins Ferry, Ohio, and the fire department of the city as shown by the report of your examiner who audited the accounts of the city.

It appears from the report that the fire department of the city consists of what is known as a volunteer fire department, that is, it was not organized as a regularly paid fire department in accordance with the statutory regulations therefor, but consisted of several so-called fire companies who elect their own officers, pass on the qualifications of their members and serve as firemen without pay.

Some time prior to the making of this report, the chief of the fire department and eight of its members were elected city councilmen and were serving as such during the period covered by the report. Their terms as councilmen will not expire until December 31, 1927. No compensation is paid to or provided for the fire department or its members except as provided by an ordinance passed, April 1, 1922, which reads in part, as follows: