Finding said bond in proper legal form and properly executed, I have noted my approval thereon, and am returning the same herewith to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

505.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN COSHOCTON, GUERNSEY AND JACKSON COUNTIES.

COLUMBUS, OHIO, May 18, 1927.

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

506.

GENERAL CORPORATION ACT—SECTION 8623-14, GENERAL CODE, CONSTRUED—PURPOSE CLAUSE IN THE ARTICLES OF INCORPORATION OF CORPORATION ORGANIZED UNDER THE PRESENT LAW MAY NOT BE CHANGED BY AMENDMENT SO AS SUBSTANTIALLY TO CHANGE THE PURPOSE.

SYLLABUS:

Section 8623-14 *of the new general corporation act confers no broader power of amendment of the purpose clause of corporations organized prior to the effective date of such act, than exists under the present corporation law. In other words, the purpose clause in the articles of incorporation of corporations organized under the present law may not be changed by amendment so as to change substantially the purpose.*

COLUMBUS, OHIO, May 19, 1927.

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

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

> "The Secretary of State has been in receipt of a number of requests for information as to the extent amendments of purpose clause in articles already on file will be permitted under the new general corporation act. Your attention is particularly directed to Section 8623-14, wherein certain limitations are put upon the power of amendment.
>
> We enclose herewith communication from Mr. ———, which will serve as a sample of requests such as indicated.
>
> We would appreciate your early opinion in the above connection as the question is one which the department very frequently has to meet."

The letter enclosed with your communication is from an attorney who inquires concerning one of his clients, a corporation, whose purpose clause now authorizes it "to buy, sell and service new and used automobiles, etc., and the customary incidentals that go with automobile sales and service." Due to expansion of the business, it has become necessary to reorganize and increase the capital stock of the corporation. The attorney inquires whether the purpose clause may be amended by charter amendment so as to permit the corporation to engage in business other than automobiles.

Your inquiry directs particular attention to the general corporation act which will become effective June 8, 1927, it being a fair inference that both you and the attorney whose letter you have sent me are satisfied that under the present corporation law such an amendment would not be authorized.

Under the new corporation law, the power to amend articles of incorporation is conferred by Section 8623-14, the pertinent part of which is as follows:

> "A corporation may amend its articles in any respect; provided, however, that only such provisions shall be included or omitted by amendment as it would be lawful to include in or omit from original articles made at the time of making such amendment, but the purpose or purposes for which the corporation was formed shall not be substantially changed unless it is otherwise provided in the articles."

This section is a substitute for the present Section 8719 of the General Code, which grants power to amend articles of incorporation in various respects, among which is the following:

> " * * *
>
> 3. So as to modify, enlarge or diminish the objects or purposes for which it was formed; but not substantially to change the purpose of its original organization."

It will be noted that the language of both the old section and the new contains a limitation to the effect that the original purpose or purposes of the corporation shall not be substantially changed. In the new section, however, there is a qualification of the limitation in that the purpose may be changed if "it is otherwise provided in the articles." This qualification is the only essential difference between the two sections as to the amendment of purpose and is evidence of authority to provide expressly in articles of incorporation filed under the new act for the right to amend the articles so as to change radically and materially the purposes of the organization. This power to change purposes is a radical departure from the theory of the present corporation law and your question is whether the power of amendment, with respect to the purpose clause, is broadened by the language of Section 14 of the new corporation act and, if so, whether a corporation already existing may avail itself of this broadened power.

You are undoubtedly familiar with the general rule which has been used in interpreting the present corporation laws with respect to the purpose clause. Section 8625 of the General Code, as it now exists, provides that the articles of incorporation shall state, among other things, "the purpose for which it is formed." It will be noted that the word "purpose" is singular and the courts of Ohio have regarded this as significant.

In the case of State ex rel vs. Taylor, 55 O. S. 61, comment was made upon the use of this word in the singular and it was decided that a corporation could not be organized for two or more distinct purposes, except in cases in which one purpose was

a mere incident of another. The rule laid down in this case does not seem to have been questioned, but considerable liberality has been indulged in in interpreting certain purposes as incident to the general purpose stated in articles of incorporation.

In Opinions of the Attorney General for 1917, at page 196, however, you will find that my predecessor held that a real estate business, an insurance business and a securities business are not so related that they can be carried on by a single corporation. Again, in Opinions of the Attorney General for 1921, at page 1137, it was held that the general corporation laws did not authorize a bank to amend its articles of incorporation so as to authorize it to do the same kind of business as a title guarantee and trust company.

In order to remove the restrictive effect of the single purpose provision of the present law, the new corporation act, in Section 8623-4, provides that the articles of incorporation shall state "the purpose or purposes for which it is formed." It will, therefore, be permissible for a corporation to be formed for any number of specific purposes, irrespective of whether or not they may be directly connected one with the other or ancillary to one main general purpose.

Reverting, however, to the language of new Section 8623-14, you will note that the limitation on the power of amendment still remains. The change in purpose or purposes must be made subject to the condition that "the purpose or purposes for which the corporation was formed shall not be substantially changed." I have no difficulty, therefore, in concluding that no corporation formed either under the present law or the new law can, by amendment of its articles of incorporation, depart from its original purpose or purposes, so as substantially to alter them, unless there be specific provision in the original articles of incorporation authorizing such a change of purpose. In other words, unless the charter of a corporation formed under the new act specifically reserves the right to amend those articles, so as to change substantially its purpose or purposes, it may not be done.

It may be argued that the language of new Section 8623-14 is such as to authorize a corporation first to adopt an amendment of its articles by permitting a substantial change of its purpose clause and then, by a similar vote, to provide specifically for the change of purpose. If this was the legislative intent, its expression is far from clear. As I have pointed out, this section specifically prohibits a change in purpose such as will materially change the original purpose unless the articles of incorporation so provides. By the use of the term "articles of incorporation," without further qualification, the intention is fairly clearly shown that this right to change must be a part of the original contract between the stockholders and the corporation. The other interpretation appears to me to be unsound for the reason that it would virtually mean that two-thirds of the stockholders could do indirectly what the statute specifically says they cannot do directly, viz., change essentially the purpose of the corporation. Since this rule would appear to be applicable to corporations formed under the new act, it would apply with even greater force in the case of old corporations. Under the present law there is no authority to provide in the articles of incorporation for the right substantially to change the purpose or purposes, and, consequently, there seems to be no method provided in the new act by which the purpose may be substantially changed.

If my construction of this section be correct, the fact that the proposed amendment, permitting a change of purpose, was passed by a unanimous vote of the stockholders, would be immaterial. While such a vote would probably effectually prevent objection on the part of any stockholder, and so not violate any of the contractual obligations as between the stockholders and the corporation, it would not remove the objection that the legislature has not granted authority to provide by amendment of articles of incorporation for a change of purpose, either by unanimous vote or otherwise, unless such right be specifically reserved in the articles of incorporation, which I interpret to be the original articles before amendment.

I am not unmindful of the provisions of Section 8623-135 of the new act, as follows:

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

Because of my conclusion that this power of amendment of purpose must be found in the original articles of incorporation, whether the corporation be one formed under the present law or under the new law, it seems that this section has no materiality.

My discussion heretofore has been solely an attempt to interpret the language used by the legislature and I have not discussed the nature or extent of the legislative power as to charter amendments. To do so is to enter a large field in which there is much doubt and uncertainty.

You are doubtless familiar with the famous Dartmouth College case, decided by the Supreme Court of the United States, in which it was held that the charter of a corporation, when accepted, constituted a contract between the corporation and the state, the obligations of which were protected from impairment by Section 10 of Article I of the Constitution of the United States. Pursuant to that decision, the Constitution of Ohio of 1851 provided in Section 2 of Article XIII, in its first sentence, as follows:

> "Corporations may be formed under general laws; but all such laws may from time to time be altered or repealed."

This reservation of the right to alter or repeal is very general among states of the Union and was incorporated to protect against the evil effects of the Dartmouth College decision. There are, however, two aspects to the charter of a corporation. In its first aspect it is an agreement between the corporation and the state. By the terms of the Ohio Constitution, any corporation formed under the general law is subject to the right of the state to alter or repeal its charter. Secondly, the charter of a corporation constitutes a contract between the corporation and its stockholders. It is in effect an agreement that the joint enterprise will be devoted to certain purposes and in certain ways. Once entered into, it becomes a contract, the terms of which cannot be substantially altered except with the assent of the stockholders unless, by the articles of incorporation or the laws in effect at that time which form an essential part of the articles of incorporation, the right to change is specifically provided for without their assent. The relationship between the stockholder and the corporation is not a matter of public interest but is purely private in character and subject only to such regulatory measures as the legislature may deem necessary for the public welfare. It is essentially a contractual relationship and, as such, is protected from undue interference by the legislature and the stockholder's right as between himself and the corporation will be enforced in a court of equity.

I quite appreciate that there is a diversity of opinion as to the authority to change substantially the form or nature of a corporation by amendment of its articles of incorporation, adopted pursuant to a new grant of legislative authority, where the right to alter and repeal is expressly reserved in state constitutions. Many extensive discussions of this subject may be found in the text books and reports and no completely satisfactory solution may be reached. This doubt is indicated by the following paragraph from Fletcher on Corporations, paragraph 4005:

> "As a rule, in granting charters or authorizing the creation of corporations under general laws, the state expressly reserves the power of alteration,

amendment or repeal, and such a reservation, of course, becomes a part of the contract between the state and the corporation, and is binding, not only upon the corporation, but also upon every individual stockholder. No stockholder, therefore, can successfully contend that his contract with the corporation is impaired by any amendment of the charter of the corporation which comes properly within such a reservation. The difficulty has been in construing such a reservation and determining what amendments are properly within it, and on this question there has been some difference of opinion. There is no use trying to reconcile all the decisions on this point, for they are irreconcilable."

In the succeeding paragraphs the author discusses the Massachusetts and New York doctrine. In both of these states it is held that an enterprise may be substantially changed against the dissent of minority stockholders by the granting of new powers by the legislature. On the other hand, in the succeeding section, the author discusses what he terms to be the majority rule. Because of the convincing logic of his statement, I quote the following:

"The reasoning of the Massachusetts court in the case above referred to is based upon the assumption that the reservation by the state of the power to alter, amend or repeal the charter of a corporation is intended, not merely for the protection of the public, but also to enable the legislature to authorize a corporation to engage in new enterprises solely for its own benefit, and whether any interests of the public are concerned or not. If the reasoning is sound, then the legislature, under such a reservation, might authorize a majority of the stockholders of a manufacturing company to engage in banking, insurance or railroading, against the dissent of the minority. In a word, the money invested by a stockholder in a corporation is at the mercy of the legislature and a majority of the stockholders. This certainly cannot be the proper construction of a constitutional or statutory provision reserving to the state the power to alter or amend charters. And such a construction is not supported by the weight of authority. The true view is that the power to alter, amend or repeal charters is reserved by the state 'solely' for the purpose of avoiding the effect of the decision in the Dartmouth College case; that the charter of a corporation is a contract between the state and the corporation within the constitutional prohibition against laws impairing the obligation of contracts, and that the purpose of the reservation is to enable the state to impose such restraints upon corporations as the legislature may deem advisable for protection of the public. Such power is not reserved in any sense for the benefit of the corporation, or of a majority of the stockholders, upon any idea that the legislature can alter the contract between the corporation and its stockholders, nor for the purpose of enabling it to do so. If this view is sound,—and that it is so seems clear,—the power of a majority of the stockholders to bind a dissenting minority by accepting an amendment of the charter does not depend at all upon whether the state has reserved the power to alter or amend the charter, but depends essentially upon the question whether the change is of such a character that it may be deemed so far in furtherance of the original undertaking, and incidental to it, as to be fairly within the power of the corporation to bind its individual members by its corporate assent, or whether it is such a departure from the original purpose that no member should be deemed to have authorized the corporation to assent to it for him."

The subject is also discussed at length in Sections 4299, et seq., of the same work.

Thompson on Corporations also treats of it generally, his consideration being found in paragraphs 401 to 415, inclusive, and also in paragraphs 344, et seq.

In Ohio I find the early case of Railroad vs. Elliott, 10 O. S. 57, where it was held that a material change in the purpose of a corporation after contracts of subscription are entered into, renders such contracts invalid and unenforcible as against the objection of the subscriber. The theory of this decision is that the relationship between the subscriber and the corporation is contractual and that the corporation may not depart from its representations to a stockholder without a release of his obligation. Upon the same principle, any stockholder may properly object to any material variation from the original purposes to which he has not given his consent. A long line of cases which hold in substantial accord with the cited case are to be found. It would be impossible within the confines of this opinion to make an elaborate analysis of all of the decisions. I think it sufficient to say that, in a matter so important and vital as a substantial change in the purpose of a corporation, while there may be no question as to the right of the legislature to provide by general law a method of effecting such a change, it is very questionable whether the corporation itself, acting in pursuance of statutory authority, may make such a change as against the right of a dissenting stockholder. You will note that I distinguish between the right of the state and of the corporation. The state's power is clear but the effect upon the individual corporation of an attempt to exercise the authority conferred may be seriously questioned.

From the foregoing discussion as to the power of the state, you will note that I am much in doubt as to the right to authorize an amendment of the articles of incorporation so as to change substantially the purpose of the corporation where there are dissenting stockholders. I think it would have been proper for the legislature to have added to the provision of Section 8623-14, which I have heretofore quoted, another clause which would have authorized an amendment of the articles of incorporation of now existing corporations authorizing an amendment to change the purpose. Such enactment would be subject to the objection that it would be ineffectual to prevent objection on behalf of dissenting stockholders. On the other hand, if the amendment were worded as follows:

> "The purpose or purposes for which the corporation was formed shall not be substantially changed unless it is otherwise provided in the articles or by amendment adopted by the unanimous vote of the holders of all classes of stock."

any possibility of objection by a dissenting stockholder would, of course, be absent.

The suggestion might be made that under Section 8623-65, provision might be made by amendment for the purchase of the stock of stockholders dissenting from a proposed change in purpose in the manner therein provided. As to corporations now existing, the same possibility of objection would be met. It might well be argued that the purpose of the corporation, being a fundamental portion of the original contract between the corporation and the stockholder, could not be changed against his will even under legislative authority.

I have perhaps gone far afield from the specific question which you ask. I have gone farther in the hope that I might suggest possible amendments rendering more flexible the provisions as to purposes of a corporation, but my examination of authority convinces me that any attempt to broaden this power as to existing corporations involves treading upon dangerous territory. As I have suggested, my difficulty is not with the authority of the legislature to enact a broadening provision but with the question of just how effectual such provisions would be in practical operation. I clearly distinguish between a specific mandate of the legis-

lature and permissive enactments of the character of these sections. In other words, I have no difficulty in stating that, were there specific authority in the new act an amendment changing the purpose of the corporation, the secretary of state would be authorized to accept such an amendment passed by the statutory number of stockholders. But this would in no way bar the right of a dissenting stockholder to make seasonable objection in the courts. My conclusion, therefore, is that as to corporations formed under the present law, it would be safe only in case provision be made for a change of purpose by unanimous consent, but if the statute attempted to authorize such an amendment by less than all of the stockholders, such action would be a violation of a stockholder's rights. It is not that such a statute would itself violate any constitutional right of the stockholder, because it is merely permissive, but the corporation in acting under the statute may itself invade the rights of its dissenting stockholders.

As to corporations formed under the new general corporation act, I am of the opinion that Section 8623-14, is specific authority for the inclusion in the original articles of incorporation of the rights to amend such articles of incorporation so as to change the corporate purposes either by the vote provided in Section 8623-15, or such other vote as is specifically provided for in the articles under authority of Section 8623-49. Any stockholders of such corporation would, of course, purchase their stock subject to such articles of incorporation and the general laws, which would include the new corporation act.

Reverting to your specific question, I find upon examination that the letter of the attorney which you enclose is not specific enough as to the proposed business for me to determine whether or not the new purpose will be a mere incident to its present purpose. I assume, however, that it is sought to make a radical departure from the original purpose and that, consequently, as I have pointed out in my discussion heretofore, the amendment to include the new purpose will not be authorized.

Answering your question specifically, I am of the opinion that Section 8623-14, of the new general corporation act, confers no broader power of amendment of the purpose clause of corporations organized prior to the effective date of such act, than exists under the present corporation law. In other words, the purpose clause in the articles of incorporation of corporations organized under the present law may not be changed by amendment, so as to change substantially the purpose.

Respectfully,
EDWARD C. TURNER,
Attorney General.

507.

MUNICIPALITY—NUMBERING OF LOTS ON ANNEXED TERRITORY—DUTY OF COUNTY AUDITOR AND RECORDER.

SYLLABUS:

1. *When territory is annexed to a municipal corporation, and by reason of said annexation the lots are not numbered consecutively upon the original plat and the plats of the addition thereto or subdivision thereof, the auditor and recorder of the county in conjunction with a person appointed by the mayor of the municipal corporation may make a revision of the numbers of all in-lots and out-lots of such municipal corporation and number anew all the lots so that the in-lots shall have*