

2500

OPINIONS

2810.

APPROVAL, BONDS OF THE CITY OF BARBERTON, SUMMIT COUNTY
—\$2,166.10.

COLUMBUS, OHIO, October 31, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2811.

APPROVAL, GAME REFUGE LEASE.

COLUMBUS, OHIO, October 31, 1928.

HON. CHARLES V. TRUAX, *Director of Agriculture, Division of Fish and Game, Columbus, Ohio.*

DEAR SIR:—I have your letter of October 18, 1928, in which you enclose the following game refuge lease, in duplicate, for my approval:

<i>No.</i>	<i>Lessor</i>	<i>Acres</i>
1161	Minnie Turner, Jackson County, Madison Township	50.13

I have examined said lease, find it correct in form, and I am therefore returning the same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2812.

CORPORATION—AMENDMENT OF ARTICLES OF INCORPORATION—
CANNOT AUTHORIZE DIRECTORS TO CONVERT OR RECLASSIFY
SHARES.

SYLLABUS:

A corporation is not authorized, in an amendment to its articles of incorporation, to provide that, by action of its board of directors, shares of one class shall be converted into shares of another class and thereby the authority to issue shares of the first class shall be automatically eliminated and the authorized shares of the second class shall be automatically increased.

COLUMBUS, OHIO, November 1, 1928.

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

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

"You will find herewith a proposed amendment to the articles of incorporation of The C. A. Corporation, an Ohio corporation, submitted by its attorneys, for approval. Your attention is particularly directed to the second full paragraph on the fourth numbered page of the proposed certificate.

We have advised the attorneys for the company that by reason of the wording of the paragraph in question the proposed amendment does not, within the meaning of GCA 4-4, definitely set forth the maximum number and par value of the various classes of shares for which authorization is sought.

In connection with Section 4 of the GCA your attention is also called to the amendment Sections, 14 and 15. In Section 14 your attention is directed to the provision of changing shares of one class to shares of another class, and in Section 15 your attention is directed in particular to sub-section 4.

You will note that the proposed amendment makes possible by action of the board of directors alone the reclassification of certain shares and it would seem that such action by the board of directors is not that contemplated in Section 15-4.

As the company in question will probably delay action by its shareholders until such time as you have rendered your opinion, it is requested that the above receive the earliest possible attention."

The proposed amendment to the Articles of Incorporation accompanying your letter includes a provision whereby the present authorized number of shares of a corporation is increased from three thousand shares of no par value to three hundred thousand shares divided into seventy-five thousand shares of preferred stock with a par value of ten dollars, seventy-five thousand shares of Class "A" common stock without par value, and one hundred and fifty thousand shares of Class "B" common stock without par value. The portion of the proposed amendment to which you take exception is the following:

"The shares of Class "A" common stock shall be convertible at the option of the board of directors of the corporation, upon thirty (30) days' notice to the holders thereof, into shares of preferred stock, on the basis of one (1) share of preferred stock for one (1) share of Class "A" common stock. The shares of Class "A" common stock surrendered for exchange into shares of preferred stock may be reissued as shares of preferred stock, as hereinbefore provided, and the number of shares of Class "A" common stock which the corporation is authorized to have outstanding, as hereinbefore stated, shall thereby be correspondingly reduced, and the number of shares of preferred stock which the corporation is authorized to have outstanding shall be correspondingly increased, but without any reduction or increase of the total stated capital of the corporation.

No holder of shares of Class "A" common stock shall have any right, preemptive or other, to subscribe for shares of stock of any class of the corporation whether now or hereafter to be issued."

As you suggest, the net effect of this provision is to give power to the board of directors to require the owners of the Class "A" shares to convert their shares into preferred shares and thereby automatically to increase the authorized number of

preferred shares and correspondingly eliminate Class "A" shares. It is this provision with respect to automatic increase and reduction to which you particularly take exception.

Section 8623-4 of the General Code prescribes what shall be set forth in the Articles of Incorporation. The fourth subdivision of that section is as follows:

"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."

Here is a specific requirement that the articles set forth the maximum number of shares of each class. If the amendment proposed were to be permitted, it is quite obvious that there would be no record in your office of the maximum number of shares of either of the two classes of shares involved, for, by action of the board of directors, the authority to increase the preferred shares could be extended, while the authority with respect to Class "A" shares could be surrendered.

In this connection it should be observed that Section 8623-14 of the General Code provides 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. In particular, without prejudice to the generality of such power of amendment, a corporation may, by amendment:

- (a) Increase or reduce the par value of shares having par value;
- (b) Change issued shares having par value into the same or a different number of shares without par value;
- (c) Change issued shares without par value into shares with par value, in which case the aggregate par value of the shares to be substituted for shares without par value shall not exceed the amount of stated capital represented by such shares without par value, plus the amount of surplus of such corporation available for share dividends upon such shares;
- (d) Increase or decrease the authorized number of shares of any class;
- (e) Change unissued or issued shares of any class into shares of another class theretofore or thereby created;
- (f) Change unissued shares without par value into shares with par value;
- (g) Change unissued shares having par value into shares without par value;
- (h) Change all or any of its previously authorized shares without par

value, whether issued or unissued, into a different number of shares of the same class or of any other class or classes without par value;

(i) Create a new class of shares;

(j) Change its name or the place where its principal office in this state is located;

(k) Change any provision inserted in the articles pursuant to paragraph 7 of Section 4 of this act.

The stated capital of a corporation shall not be reduced except in the manner hereinafter provided."

The first sentence in this section restricts the right of amendment to such provisions as it would be lawful to include in or omit from original articles. As I have pointed out, the requirement that the maximum number of shares in each class shall be set forth in the articles is mandatory by the provisions of Section 8623-4 of the General Code. Hence, if the proposed amendment omits a statement of such maximum, it should not be permitted. I can reach no conclusion except that the proposed amendment does omit to set forth definitely the maximum number of either preferred shares or Class "A" shares. The Articles of Incorporation would accordingly be deficient in this respect.

It is of course entirely proper to provide in Articles of Incorporation or amendments thereto for conversion rights whereby shares of one class may be converted into shares of another class. In my opinion, however, in exercising this right there must exist authority by virtue of the Articles of Incorporation to issue the shares in question into which other shares are converted; that is, the shares issued in exchange must be within the maximum authority specifically set forth in the Articles.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that a corporation is not authorized, in an amendment to its Articles of Incorporation, to provide that, by action of its board of directors, shares of one class shall be converted into shares of another class and thereby the authority to issue shares of the first class shall be automatically eliminated and the authorized shares of the second class shall be automatically increased.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2813.

TOWNSHIP TRUSTEES—REAL ESTATE—ACCEPTANCE OF CONVEY-
ANCE FROM GRANTORS UPON CONSIDERATION OF THEIR PER-
MANENT SUPPORT HELD ILLEGAL.

SYLLABUS:

The trustees of a township are without authority to accept a conveyance of real estate by virtue of a contract or upon a condition that they will continue for an indefinite period to furnish relief or support to the grantors thereof, where such relief or support thereby required is neither partial nor temporary.