

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.

* * * * *

(Italics the writers)

In specific answer to your inquiry, however, it is my opinion that the General Corporation Act does not authorize the inclusion in the articles of a corporation of a clause which provides in effect that at a future date the authorized shares of a given class shall be increased and the authorized shares of another class proportionately reduced or abolished without an amendment to the articles being filed in the office of the Secretary of State.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3361.

APPROVAL, ABSTRACT OF TITLE TO LAND OF RHODA J. SELLS IN
CLINTON TOWNSHIP, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, June 26, 1931.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—There has been submitted to me for my examination and approval an abstract of title, deed form and encumbrance record No. 1464, relating to a tract of land which the state proposes to purchase from moneys accruing as interest on endowment funds of the Ohio State University, which tract of land is now in the custody and control of the Common Pleas Court of this county by virtue of certain receivership proceedings covering the property and estate of one Rhoda J. Sells, in which proceedings John E. Sater of this city was appointed receiver of such property, including the tract of land here under investigation.

The tract of land here in question is situated in Clinton Township, Franklin County, Ohio, and the same is more particularly described as follows:

“Beginning at a spike in the center of the Columbus & Delaware Road 509.83 feet south of the intersection of such road and the Kinnear Road; thence south 86 degrees 48 minutes east 437.25 feet to the center of the Olentangy River; thence with the center of said river south 17 degrees 52 minutes west 244.86 feet to a point; thence continuing with the center of said river south one degree east 443.9 feet to a point in the center of said river; thence south no degrees 54 minutes west 540 feet to a point in the middle of said river; thence north 85 degrees 52 minutes west 484.1 feet to a spike in the center of the Columbus & Delaware road; thence along the center of said road north 5 degrees 47 minutes east 1212.5 feet to the point of beginning, containing 12.11 acres, more or less.”

Upon examination of the abstract of title submitted to me, I find a number of irregularities in the early history of the title to tracts of land including that here under investigation, and I likewise find in the abstract some matters which apparently have no relation to the history of the title to this particular tract of land.

However, on account of the great lapse of time which has occurred since the irregularities here referred to appeared in the chain of title to this property, I feel that such defects and irregularities can be sufficiently waived; and I find that at the time said receivership proceedings, above referred to, were filed against said Rhoda J. Sells affecting her property and estate, on October 4, 1931, said Rhoda J. Sells had a good and indefeasible fee simple title to the above described property, free and clear of all incumbrances except the taxes and assessments thereon.

It appears from said abstract of title, as well as from the deed form submitted to me, that the above described property is to be conveyed to the state of Ohio by the deed of the receiver of the property and the estate of Rhoda J. Sells above named, which deed is to be executed and delivered to the state pursuant to an order and decree of the Common Pleas Court of this county in the receivership proceedings above mentioned. In this connection, it appears that on November 15, 1930, during the pendency of said receivership proceedings, Rhoda J. Sells died. In this situation, the question was presented to the court in which the receivership proceedings were pending, with respect to its further jurisdiction over the property of Rhoda J. Sells, including the tract of land here in question, involved in said receivership proceedings. The court upon consideration of this question by a judgment and order entered by it on December 21, 1930, sustained its jurisdiction to administer the property and estate of Rhoda J. Sells through the receiver theretofore appointed by said court, notwithstanding the death of said Rhoda J. Sells and notwithstanding the fact that by her last will and testament she had devised such property to certain persons therein named as devisees. The petition or motion by which the jurisdiction of the court was invoked for the appointment of a receiver of the property of Rhoda J. Sells is not sufficiently abstracted to show whether or not there was any mention therein of the tract of land here in question or of other real property of said Rhoda J. Sells. Inasmuch, however, as the judgment and order of said court appointing said receiver specifically provides that the person named is appointed receiver "of all of the property of defendant of every nature and kind", I assume that the court has jurisdiction to make and enter the judgment and order appointing said receiver; and said order is sufficiently broad to cover the real estate of Rhoda J. Sells, including the tract of land here under investigation, even though the abstract does not affirmatively show that the petition and motion upon which said receiver was appointed, in and by their terms, referred to the real property of Rhoda J. Sells, the defendant in said action. *Cheney vs. The Maumee Cycle Company*, 64 O. S. 205. In this situation, the appointment of said receiver was in effect an equitable execution on the real property of Rhoda J. Sells, including, of course, the tract of land above described, and the court's jurisdiction with respect to said property continued until the rights of creditors with respect to said property is worked out through said receiver. I am of the opinion therefore that the court was correct in its finding with respect to its continued jurisdiction over this property through said receivership proceedings.

It is shown by the further proceedings of the court in the receivership case, above noted, that the tract of land above described is to be sold and conveyed to the state of Ohio pursuant to an order of the court directed to the receiver. And in connection with this matter there has been submitted to me a deed form of a deed to be executed and acknowledged by the receiver for the purpose of conveying the above described property to the state. I find the form of said deed to be correct and when the same is properly executed and acknowledged it will convey said property to the state by fee simple title. As a receiver's deed the same does not, of course, contain any warranties with respect to incumbrances on

the property thereby conveyed. From the abstract of title submitted it appears that the only incumbrances upon this property are the taxes thereon and certain assessments levied to pay for certain improvements on the Flenniken Road.

It appears from the abstract that the taxes on the property here in question have been included in the taxes assessed on a tract or tracts of land aggregating in amount 94.629 acres of land standing of record in the name of Rhoda J. Sells, and that the taxes and assessments on the tract of land here under investigation have not been segregated from the taxes and assessments extended on the total acreage of land standing in the name of Rhoda J. Sells and now involved in said receivership proceedings. The abstract shows that the taxes on said total acreage for the year 1930 amount to \$682.60, to which amount there is to be added a penalty in the sum of \$34.13 for non-payment of the first half of said taxes, which were due and payable in December, 1930. It likewise appears that the undetermined taxes for the year 1931 are a lien upon said lands standing in the name of Rhoda J. Sells, which include the tract here under investigation.

In addition to the taxes above noted, assessments in the amount of \$1218.99 are a lien upon the total acreage above noted. Before the transaction for the purchase of the above described property is closed there should be a segregation of the taxes and assessments referable to said tract of land and which are a lien thereon, and an adjustment of such taxes and assessments should be made.

It will be noted that the deed form submitted to me has not yet been executed and acknowledged by said receiver, and care should be taken to see that said deed is properly executed and acknowledged before any warrant is issued covering the purchase price of said property.

Upon examination of encumbrance record No. 1464, I find that the same has been properly executed and approved and that there is shown thereby a sufficient unincumbered balance to pay the purchase price of said property, which purchase price is the sum of \$4,000.00.

It does not appear from the files submitted to me that the board of control has at any time approved the purchase of this property, or taken any action releasing the money necessary to pay the purchase price of the property. As above noted, however, it appears that the purchase price of this property is to be paid out of moneys accruing as interest on endowment funds owned and held for the use of Ohio State University, and as to such moneys it does not appear that any action of the board of control was necessary as a condition to their legal expenditure for the purpose of acquiring this property.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3362.

APPROVAL, BONDS OF VILLAGE OF MARBLE CLIFF, FRANKLIN COUNTY, OHIO—\$12,271.12.

COLUMBUS, OHIO, June 26, 1931.

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