

inspector in any county in the state other than the one in which the village of which he is a deputy marshal is situated, since his jurisdiction as deputy village marshal in the execution of writs and process on criminal cases is co-extensive with the county in which the village of which he is such deputy is situated, and since as such deputy marshal he is required to enforce all laws, including those having to do with the prohibition of the liquor traffic, he cannot be paid a salary from the state treasury for his services as temporary prohibition inspector in the county in which the village of which he is a deputy marshal is situated, but only such compensation as he would be entitled to receive as deputy village marshal.

The duties of a deputy village marshal require that he be available at all times. Before absenting himself, he should obtain the consent thereto from his village authorities.

Respectfully,
EDWARD C. TURNER,
Attorney General.

51.

CORPORATION — ARTICLES OF INCORPORATION — AMENDMENT — SECTION 8728-1, G. C., DOES NOT AUTHORIZE SEPARATE CLASS OF NO-PAR COMMON STOCK SUBJECT TO RESTRICTIONS OR QUALIFICATIONS—VOTING POWER.

SYLLABUS:

Section 8728-1 of the General Code does not authorize a corporation to create a separate class of no-par common stock subject to restrictions or qualifications other than with respect to voting powers.

COLUMBUS, OHIO, February 5, 1927.

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

DEAR SIR:—This acknowledges your letter of recent date, in which you ask my opinion as to whether you are authorized to accept a certificate of amendment to articles of incorporation under the facts as you present them. The facts may be summarized briefly as follows:

“A corporation now has outstanding 7,500 shares of no par common stock. It proposes to increase the number of shares to 30,000 shares of no par common capital stock, divided into 15,000 shares of Class A stock and 15,000 shares of Class B stock. The Class A stock is to have all of the rights now exercised by the present no par common stock. The Class B stock is to be non-voting and is to have the further qualification that said shares shall not be sold unless and until they are first offered in writing to the president of the company for the benefit of the holders of the Class A stock at a price equal to \$100.00 per share, plus a pro rata share of the undistributed earnings, to be determined in accordance with the formula prescribed by the proposed amendment.”

You will note that this corporation is attempting to make a distinction between the two classes of no par common stock, concerning something other than the question of voting.

The pertinent part of Section 8728-1, of the General Code, on this subject, is as follows:

"Each share of common stock, without nominal or par value, shall be equal to every other share of such stock, except that the articles of incorporation may provide that such stock shall be divided into different classes, with such designation and voting powers or restrictions or qualifications thereof as shall be stated therein, but all such stock shall be subject to the preference given to the preferred stock, if any, authorized to be issued."

Plainly these words authorize a division into different classes, which may be designated in such manner as the company may desire. The question of whether or not the words "restrictions" and "qualifications" are a part of a qualifying phrase of the words "voting powers," or whether they refer back to the word "classes," is not without some difficulty. I am of the opinion, however, that the intent is fairly clear that the phrase "or restrictions or qualifications thereof" refers solely to voting powers. Such an interpretation would prohibit the creation of any class of no par common stock, with a restriction or qualification of the ordinary rights of such stockholders in any respect except as to voting powers.

This view is in accord with that expressed in a letter of this department of May 22, 1923, addressed to your predecessor, to which you call my attention. The language there used is as follows:

"* * * while the non-par act authorizes the division or classification of non-par common shares, under any designation the corporation may desire, there is no authority conferred to give any class of such stock a preference over another class in the payment of dividends—the only preference allowed being with respect to 'voting powers or restrictions or qualifications thereof'—and this seems to be emphasized by the provision that 'each share of such common stock, without nominal or par value, shall be equal to every other share of such stock' except in the particulars just mentioned."

Further confirmation of this position is found in the report of Committees Respecting Revision of Ohio Corporation Law and Drafts of General Corporation Act and Foreign Corporation Act, which was published by the Ohio State Bar Association under date of December 28, 1926. As you doubtless know, the Ohio State Bar Association, through various committees, has been studying for a considerable length of time the corporation laws of Ohio with the view of recommending to the legislature a comprehensive recodification thereof. In such report, commencing on page 19, are set forth in tabulated form some of the present deficiencies of the law. On page 22, there is the following statement:

"24. There is no provision authorizing any differentiation as to different classes of no par stock except as to voting power."

It seems, therefore, to have been the consensus of opinion of the many prominent members of the Ohio Bar who have been engaged upon this work, that the issuance of non-par stock is at present restricted in the respect which I have indicated.

Answering your question directly, I am of the opinion that you are not authorized to accept a certificate which provides for any restriction of one class of no par common stock over another, other than in respect to voting power.

Respectfully,
EDWARD C. TURNER,
Attorney General.