In that case it appeared that the county board of education of Putnam county, acting by authority of Section 4736, General Code, had passed a resolution creating the Ottoville Village School District from territory which had theretofore been composed of school districts and parts of school districts in Putnam County. Thereafter, there was filed in the office of the Putnam County Board of Education a remonstrance against such action of the board, containing the names of a majority of the electors of the territory affected by the county board's action. Later, and within thirty days from the date of the passage of the resolution of the county board creating the said school district, a number of the electors whose names appeared in the remonstrance in question, filed with the county board of education a written request that their respective names be withdrawn from the remonstrance. If the persons so requesting were permitted to withdraw their names from the remonstrance, the number left would be less than a majority of the qualified electors residing in the territory affected and thus the remonstrance would be rendered ineffectual. The court held that the signers to the remonstrance had the right to withdraw their names before and up to the end of the thirty day period allowed for the filing of the remonstrance. The pertinent portion of Section 4736, General Code, reads as follows:

> "The county board of education may create a school district from one or more school districts or parts thereof, and in so doing shall make an equitable division of the funds or indebtedness between the newly created district and any districts from which any portion of such newly created district is taken. Such action of the county board of education shall not take effect if a majority of the qualified electors residing in the territory affected by such order shall within thirty days from the time such action is taken file with the county board of education a written remonstrance against it."

By comparison of the terms of Section 4736, General Code, it will be noted that the provisions of the two statutes with reference to the filing of a remonstrance and the effect thereof are practically the same. We must therefore conclude that the holding of the court in the Neiswander case is dispositive of the question presented by you.

I am therefore of the opinion that under the facts presented the remonstrance which had been filed against the action of the county board of education in transferring the territory in question was rendered ineffectual by the filing of written withdrawals from said remonstrance within the thirty days allowed by the statute for the filing of the remonstrance.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3360.

GENERAL CORPORATION ACT—NO AUTHORITY TO INCLUDE IN ARTICLES, A CLAUSE PROVIDING THAT AT FUTURE DATE AUTHORIZED SHARES OF GIVEN CLASS SHALL BE INCREASED AND THOSE OF ANOTHER CLASS PROPORTIONATELY REDUCED OR ABOLISHED WITHOUT FILING OF AMENDMENT TO SAID ARTICLES IN SECRETARY OF STATE'S OFFICE.

SYLLABUS:

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 proportionally reduced or abolished without an amendment to the articles being filed in the office of the Secretary of State.

COLUMBUS, OHIO, June 26, 1931.

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

DEAR SIR:—Your letter of recent date is as follows:

> "We have been requested to advise as to whether or not articles of incorporation can be accepted for filing which carry a classification of shares providing among other things that one class shall enjoy certain rights and privileges which rights and privileges and all other distinctions between the two classes of shares are to cease on a given date so that thereafter all stock shall be of one class and of equal rights in all respects.
>
> In the question as stated above you will note that the rights, privileges and distinctions are to cease and determine on a given date. Your opinion is also requested as to whether or not such a filing could be accepted where the date of determination of the distinctions is uncertain, that is, for instance, where the rights and privileges and distinctions are to cease when a certain capital reserve has been accumulated by the corporation.
>
> In connection with the above, your attention is respectfully directed to an opinion of the Attorney General under date of November 1, 1928, being Opinion No. 2812 of the Hon. Edw. Turner, then Attorney General. My main reason for referring to the opinion is that it was in connection with a proposed provision in articles which would have permitted a change in classification of shares to have occurred without any subsequent filing evidencing the change being made in this office."

The syllabus of the opinion to which you refer, appearing in Opinions of the Attorney General for 1928, Vol. IV, p. 2500, is as follows:

> "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."

The foregoing opinion, with which I am in accord, is predicated upon the fact that Section 8623-4, General Code, requires that the articles of a corporation shall set forth the maximum number of shares of each class which are authorized. The provision proposed to be included in the articles of the corporation there under consideration sought to give authority to the board of directors to change the authorized number of shares of the respective classes. To use the language of my predecessor:

> "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. * * * * * * *

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."

It is my view that the foregoing opinion is dispositive of your inquiry, since you state that it is proposed that at some time in the future all distinctions between the two classes of shares shall cease and that thereafter all stock shall be of one class. This amounts to nothing more nor less than an attempt to increase the total authorized number of shares of one class at a future date, certain or uncertain, without an amendment of the articles.

If it were sought to provide that certain rights and privileges with respect to Class B shares shall at a certain time in the future or upon the accumulation of a certain capital reserve, be the same as those of the Class A shares, leaving, however, some distinction between the two so that after such time there will still be the same authorized number of Class A and Class B shares, such a provision would probably be authorized in view of Section 8623-4, General Code, as amended by the 88th General Assembly, which section provides in part as follows:

"Any number of natural persons, not less than three, a majority of whom are citizens of the United States, may become a corporation, by subscribing, acknowledging and filing in the office of the secretary of state articles of incorporation, hereinafter called articles, setting forth:

* *

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—

(a) the designation of each class, the number and par value, if any, of the shares of each class and, if desired, of the series of any class; and

(b) the express terms and provisions of the shares of each class.

'Express terms and provisions', as used in this act, shall mean any dividend rates, preferences, conversion rights, voting rights, preemptive rights, rights in stated capital, option rights, participation rights, redemption rights, *which may be at the option of the shareholder or of the corporation or at a specified time or in a specified event,* amounts payable on redemption of shares (hereinafter sometimes designated 'redemption price'), amounts payable on shares of any class upon dissolution, liquidation, consolidation, merger, or sale of entire assets of the corporation (hereinafter sometimes designated 'liquidation price'), *right of alteration of express terms and provisions* and any other relative rights of shareholders, or any restrictions or qualifications of the rights of the holders of shares of any class, which are expressed in the articles.

* *

7. Any lawful provisions which may be desired for the purpose of defining, limiting and regulating the exercise of the authority of the

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.