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COMPUTING A FEE TO BE CHARGED RELATING TO AN INCREASE IN THE AUTHORIZED NUMBER OF SHARES OF A CORPORATION—§111.16 (B), R.C.

SYLLABUS:

In computing a fee to be charged under the provisions of Section 111.16 (B), Revised Code, as it relates to an increase in the authorized number of shares of a corporation, the only fact to be considered is the increased number of shares authorized to be issued, and consideration may not be given to a change or lack of change in par value or stated capital.

Columbus, Ohio, May 19, 1960

Hon. Ted W. Brown, Secretary of State
State House, Columbus, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“This office has this date referred to you for the endorsement thereon of your approval, a certificate of amendment to the articles of incorporation of THE OHIO STATE LIFE INSUR-

ANCE COMPANY which purposes to change the number of authorized shares of capital stock from 100,000 shares with a par value of \$10.00 to 500,000 shares having a par value of \$2.00. The company has deposited with this office a check for \$2,025.00 to cover the filing fee assessed by reason of our interpretation of Section 111.16 of the Revised Code of Ohio.

“The company is protesting our computation of the fee to be charged for the filing of this amendment, contending that where a stock split is involved and the authorized capital is to remain the same, the fee to be assessed does not relate to the number of shares to ultimately be authorized by the amendment.

“Since the company is protesting the assessment of the fee, we are asking your opinion as to the specific question concerning the method of the computation of the fee to be assessed where, 1—The number of shares authorized is increased by the amendment with no change in the par value of shares originally authorized and 2—Where the number of shares to be authorized by the amendment is increased while the par value of the existing shares is to be reduced with the stated capital remaining the same.

“For your convenience in rendering an opinion we are enclosing thermofax copies of the certificate of amendment as well as the cover letter of the company.”

As stated in your letter, the method of computation of the fee to be charged by your office as it relates to the questions to be answered by this opinion is set forth in Section 111.16, Revised Code, the pertinent part of which reads as follows :

“The secretary of state shall charge and collect, for the benefit of the state, the following fees :

“* * *

“(B) For filing and recording a certificate of amendment to or amended articles of incorporation, or a certificate of reorganization, or an agreement of merger or consolidation, or a certificate of dissolution, or other certificate required or permitted to be filed and recorded by sections 1701.01 to 1701.98, inclusive, 1702.01 to 1702.58, inclusive, of the Revised Code, the sum of twenty-five dollars, *and in case of any increase in the number of shares authorized to be issued effected by such certificate or agreement the further sum of:* (1) ten cents for each share authorized up to and including one thousand shares; (2) five cents for each share authorized in excess of one thousand shares up to and including ten thousand shares; (3) two cents for each share authorized in excess of ten thousand shares up to and including fifty thousand shares; (4) one cent for each share

authorized in excess of fifty thousand shares up to and including one hundred thousand shares; (5) one-half cent for each share authorized in excess of one hundred thousand shares up to and including five hundred thousand shares; (6) one-quarter cent for each share authorized in excess of five hundred thousand shares; less credit at said rates for the number of shares previously authorized to be issued by the corporation or by the domestic corporations a consolidation or merger of which is effected by such certificate or agreement." (Emphasis added)

As it relates to an increase in the number of shares of any corporation through an amendment to the articles thereof, the above quoted section in clear and unambiguous language requires the secretary of state to charge and collect a fee based upon the increase in the number of shares "authorized to be issued."

The question, therefore, is whether or not the amendment to the articles authorizes an increase in the number of shares authorized to be issued. There is no authority for you to consider the par value of the shares or the authorized capital of the corporation; nor are you authorized or required to inquire into the use of the additional authorized shares. Moreover, the fact that such shares are to be used for a stock split can have no effect upon the computation of the fee to be charged.

Counsel for the insurance company in his letter which was attached to your inquiry says:

"We find no legal precedents in this State to guide us in the correct construction of this statute; however, reference is made to the case of *Lake Superior Dis. Power Co. v. Public Service Commission*, 26 N.W. 2d 278, 250 Wis. 39 (1947), wherein the meaning of a similar statute was at issue. The Court there held that in a stock split-up where there is no change in the capital stock a mere increase in the number of units of shares of stock does not involve an 'issuance of securities' and no tax was payable thereon."

In the case of *Lake Superior Dis. Power Company v. Public Service Commission*, 26 N.W. 2d, 278, the Wisconsin court had before it a question of law which arose because of the action of the public service commission of that state in assessing a fee to the plaintiff company under the provisions of Section 184.10 (1) of the Wisconsin Statutes which reads as follows:

"Each public service corporation on filing an application for authority to issue any securities to which this chapter is appli-

cable shall pay with such application, prior to the issuance of a certificate, a fee of one dollar per thousand for each thousand dollars par value of each authorized issue of securities, but in no case less than ten dollars for any issue."

Plaintiff power company desired to split its authorized and outstanding \$75 par value stock on a ratio of three and three quarters to one for \$20 par value stock. The court in determining that the fee set forth in Section 184.10 (1) Wisconsin Statutes, *supra*, was not applicable to plaintiff company held, as stated in the above quoted portion of counsel for the insurance company's letter, that a stock split-up did not involve an "issuance of securities" and thus the fee was not payable. While an increase in shares when made for the purpose of a stock split may not be an issuance of securities under the Wisconsin law, there can be no doubt that such an increase is an "increase in shares authorized to be issued."

Section 111.16, Revised Code, has no requirement that the secretary of state must find that an amendment to the articles authorizes an issuance of securities in order that he may charge and collect the fee set forth therein. As stated earlier, the only requirement of said statute and therefore the only fact which may be considered by the secretary of state is whether or not an amendment to the articles authorizes an increase in the number of shares to be issued. This clear and unambiguous language requires no interpretation and as stated in 37 Ohio Jurisprudence, page 517, Statutes, Section 278,

"* * * An unambiguous statute is to be applied, not interpreted.* * *"

In accordance with the above, I am of the opinion and you are advised that in computing a fee to be charged under the provisions of Section 111.16 (B), Revised Code, as it relates to an increase in the authorized number of shares of a corporation, the only fact to be considered is the increased number of shares authorized to be issued, and consideration may not be given to a change or lack of change in par value or stated capital.

Respectfully,

MARK McELROY
Attorney General