

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.

COLUMBUS, OHIO, November 1, 1928.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—I have received your letter of recent date requesting my opinion in the respects specified therein as follows:

- “1. Do the trustees of Paulding Township have legal title to the lands in question?
2. If they do not have legal title to the premises in question, do the trustees of said township have an equitable interest in said lands to the extent of the value of the aid heretofore given to these people?
3. If they have such equitable interest what proceedings would you suggest as to the sale of said property? Would it be by guardian of said indigent persons or should the sale be by the trustees or should the county take over the premises direct? That is, if they make these folks go to the county home.
4. Are the premises liable to taxation while the trustees own the legal title to same?”

I also have the statement of facts presented by the Clerk of Paulding Township which is as follows:

“For a number of years past the Township Trustees of Paulding Township have been extending aid to Mr. and Mrs. S., elderly residents of Paulding, Mr. S. being physically unable to provide. While they have children, all are married and of limited means and unable to provide for their parents.

When the Trustees first began to extend aid, it was expected that same would be for a limited period only, on account of Mr. S.'s declining physical condition at the time. However, his condition did not continue to grow worse, and aid has since been continuously extended to the couple.

Finally, reaching the conclusion that the period of aid they might require might be indefinite, the Trustees approached them with the idea that they must, as permanent public charges, be committed to the county home. To this they emphatically objected, and upon investigation, finding that they could be maintained at a lower cost in their own home than at the county home, the Trustees consented to continue to aid them, upon condition that their home, a house and lots in Paulding village be deeded to the township as recompense, in part at least, for their keep. This was accordingly done, and the Trustees now have the deed for the property.

The Trustees now come to you for advice as to whether they proceeded legally in taking the above action. If the action was legal, are the Trustees liable for taxes on the property, or is it exempt from taxation?

Also, the Trustees now desire to commit Mr. and Mrs. S. to the county home, on the ground that they are permanently indigent, and are properly wards of the county. Can this be done, in view of the fact that the Trustees have accepted their property in consideration for their keep?

It is imperative that the Trustees have advice on this subject from as high an authority as possible, and accordingly request that you submit same to the Attorney General for his opinion.”

It appears from the foregoing statement of facts that a good and sufficient deed to the premises in question has been executed and delivered to the township trustees by Mr. and Mrs. S., and that it has been received by and now is in the possession of such trustees. The answer to the first question, as to whether or not such trustees "have legal title to the lands in question," therefore depends upon whether or not such trustees have legal capacity to accept title to real estate.

Section 18 of the General Code provides in substance that the township, among other political subdivisions and institutions, may receive by gift, devise or bequest, moneys, lands or other properties for their benefit or the benefit of any of those under their charge; and that such gifts or devices of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.

Section 3244 of the General Code, applying particularly to townships, also provides that the township shall be capable of "receiving and holding real estate by devise or deed, or personal property for the benefit of the township for any useful purpose;" and that the trustees of the township may also receive any conveyance of real estate to the township when necessary to secure or pay a debt or claim due the township.

Section 3281 of the General Code further provides that trustees may accept, on behalf of the township, the donation by bequest, devise or deed of gift, or otherwise, of any property, real or personal, for any township use; and that property not needed may be sold at public auction.

By each of these sections, therefore, townships in Ohio are granted the power to receive deeds for real estate and therefor the proper execution and delivery of a deed to the township trustees vests the legal title of the real estate therein described in such trustees.

It appears further, however, from the statement of facts accompanying your letter that this conveyance was executed by the grantors and received by the trustees not as a gift under General Code, Sections 3244 or 3281, but in accordance with an agreement, which imposed a condition upon the conveyance, which so far as your letter discloses is not included in the deed. This agreement, or condition, appears to be that the "trustees consented to aid them (Mr. and Mrs. S.), upon condition that their home, a house and lots * * * be deeded to the township as recompense, in part at least, for their keep."

Although the term for the continued aid is not definitely set forth in the statement of facts, the reasonable implication seems to be that it was intended by the grantors that such aid should continue for such a period as it might be required. It appears further from the statement of facts that inasmuch as it was at that time proposed to commit them to the county home, the aid required would constitute complete maintenance and support.

As above noted, Section 18 of the General Code provides that gifts of real estate to the township may be in fee simple or of any lesser estate and may be subject to any "reasonable reservation." It has heretofore been claimed in this state that a condition such as the one described above might be considered as such a "reasonable reservation." The Attorney General rendered an opinion to the President of the Ohio State University in regard to such a contention and his opinion No. 1648, dated July 31, 1924, appears in the Opinions of the Attorney General for 1924, Volume I, page 424, the syllabus of which reads as follows:

"Under the terms of Section 18 of the General Code, the institution(s) therein mentioned may not accept a gift and promise to the donor thereof an annuity. Whatever rights are reserved by the donor must arise out of the subject of the gift itself."

The opinion further proceeds as follows:

"Bouvier defines 'reservation' as follows :

'The creation in behalf of the grantor of a new right issuing out of the thing granted, something which did not exist as an independent right before the grant.'

It is evident, therefore, that any reservation to be made in behalf of the donor must be a reservation of something arising from the property which is the subject of the gift.

Bouvier defines 'annuity' as follows :

'A yearly sum stipulated to be paid to another in fee or for life or years and chargeable only on the person of the grantor.'

It is therefore evident that the University cannot enter into any contract for an annuity, for this would not be a reservation out of the thing granted.

If the prospective donor desires to devise lands or other property to the University with a provision that a certain part of the income therefrom, or of the use thereof, or some right therein, shall be reserved to him, the University would be authorized to accept such gift, provided the reservations are reasonable. Whether a proposed reservation is reasonable, would depend entirely upon the nature and extent of the reservation. Whatever the donor receives by way of reservation he must receive from the property itself and not from the University."

While the agreement proposed in the present case is not for the payment of an annuity, it does contemplate an assumption of expense which it is contemplated will exceed the value of the property to be received. This is apparent from the language in the statement of facts to the effect that the property shall be received "as recompense, in part at least, for their keep."

I am of the opinion, therefore, that the trustees did not have the authority to receive the deed to the property in question subject to the condition imposed, by virtue of the provisions of Section 18 of the General Code. Neither does it appear that the act of the grantors and the trustees in the present case contemplated the deed of the property in question to be solely "for the benefit of the township for any useful purpose." Nor was the conveyance intended to "secure or pay a debt or claim due the township" under Section 3244 of the General Code, above referred to, unless the agreement or condition upon which said conveyance was made merely contemplated the discharge of a duty imposed by law, in which event the conveyance would in fact be merely a gratuity contemplated by said section.

The duty of township trustees with respect to the support or relief of residents of the township requiring it is set forth in Section 3476, General Code, which reads as follows :

"Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act (G. C., Sections 3476, et seq.) that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in Sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or under county control. When a city is located within one or more townships, such temporary relief shall be

given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city."

You will note that this section in very clear terms specifies that the support or relief contemplated therein shall be either of a *temporary* or a *partial* nature, and shall be furnished in the homes of the persons requiring it. Section 3488 of the General Code makes additional provision for relief by township trustees where there is no county home and Section 3494 of the General Code provides for control of property by township trustees in such cases. I will assume that Paulding County owns and maintains such a home.

Again referring to your statement of facts, it appears that aid has already been extended to Mr. and Mrs. S. by the township trustees of Paulding Township "for a number of years past" and that the relief or support intended under the terms of the agreement is to be not only of a permanent nature but is to be complete support. Therefore, the obligation proposed to be assumed by the township as a condition of the conveyance of the real estate in question is one not imposed by law. Neither was it the intention of the grantors that the conveyance should serve as the payment of the debt or claim due the township for support or relief furnished in the past.

It is my opinion, therefore, that the trustees of Paulding Township are without authority to enter into the agreement with Mr. and Mrs. S., as outlined in your statement of facts. It follows that since such an agreement cannot be legally enforced, or carried out, the grantors are entitled to a rescission thereof and to the return of the property which they conveyed in performance thereof upon their part.

It thereupon becomes the duty of the township trustees to proceed under the provisions of Section 2544 of the General Code by transmitting "a statement of the facts to the superintendent of the infirmary (county home)."

Section 2548 of the General Code provides for the disposal of property owned by an inmate of a county home as follows:

"When a person becomes a county charge or an inmate of a city infirmary and is possessed of or is the owner of property, real or personal, or has an interest in remainder, or in any manner legally entitled to a gift, legacy or bequest, whatever, the county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located, and the proceedings therefor, sale, confirmation of sale and execution of deed by such county commissioners or officer of the city infirmary shall in all respects be conducted as for the sale of real estate by guardians. The net proceeds thereof shall be applied in whole or in part, under the special direction of the county commissioners or the proper city officer as is deemed best, to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary."

Since Mr. and Mrs. S. are entitled to a return of the property which they conveyed to the township trustees, on account of the inability of said trustees to perform the terms and conditions of the contract pursuant to which such conveyance was made, as above set forth, it then becomes the duty of the county commissioners to take charge of the property in accordance with the foregoing section.

The second question in your letter inquires as to whether or not the trustees of the township have an equitable interest in the lands received from Mr. and Mrs. S. to the extent of the value of the aid heretofore given, if such trustees do not have the legal title to the premises. As above stated, in answer to your first question, the trustees

do have the "legal title" since a deed has been properly executed, delivered to and received by them. However, that legal title is held in trust for the grantors on account of failure of consideration as hereinabove set forth.

The agreement upon which the conveyance was made to the trustees was clearly not divisible. The grantors did not intend or contemplate that they would pay from their property for aid furnished them by the township for a limited period, so far as the statement of facts discloses. They therefore have the right to a complete and unconditional return of their property. Upon admission of these parties to the county home, therefore, the county commissioners acquire the right to all of the property owned by them by virtue of Section 2548 of the General Code, above quoted. The question of the claim of the township trustees as against that of the county commissioners is disposed of by the concluding sentence of Section 2544 of the General Code, which reads as follows:

"The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

The foregoing conclusions eliminate the necessity of answering your question 4 in regard to whether or not the premises in question are liable to taxation while the trustees own the legal title to the same. However, it is my opinion that real estate held by the trustees of a township, which is not used for the purposes specified in Sections 5353-1, 5356 or some other section of the General Code, specifically exempting it from taxation, is subject to taxation while so held.

More specifically answering your questions, I am of the opinion that:

1. The trustees of Paulding Township in the case which you present have legal title to the lands in question, subject to the equitable right of the grantors to rescission and a reconveyance as above set forth.

2. Such trustees do not have an equitable interest in said lands or a claim against said property for reimbursement to the extent of the value of the aid heretofore given the grantors.

3. This inquiry is disposed of by the answer to question 2.

4. The premises in question are subject to taxation while held by the trustees for a purpose other than those specified in the sections of the General Code specifically providing for the exemption of township property from taxation.

In consideration of the foregoing, it is my suggestion that the county commissioners of Paulding County proceed to take possession of the property of Mr. and Mrs. S., pursuant to the provisions of Section 2548 of the General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2814.

TAX AND TAXATION—DELINQUENT TAXES—COLLECTION AFTER AUGUST SETTLEMENT—DISTRICT MAY NOT BORROW IN ANTICIPATION OF COLLECTION BEFORE JANUARY 1ST.

SYLLABUS:

Under the provisions of Section 2293-4, General Code, the taxing authorities of a taxing district may not prior to January 1, 1929, borrow money in anticipation of the collection of taxes remaining delinquent at the August settlement and collected prior to the February settlement.