

of one and one-quarter cents even as interest is too small and trifling a matter with which to vex the courts."

—*Milligan vs. Marshall*, App., 38 Pa. Sup. Ct. 60.

"An instruction warranted a recovery of ninety-two cents, and the verdict was actually twelve cents in excess of the amount sued for. Held, that the instruction was harmless, and the excess in the recovery too small to require a remittitur."

—*Cameron vs. Hart*, 57 Mo. App. 142.

Small blotters such as you have submitted are customarily distributed free of charge and their value is negligible. It is, therefore, my opinion that Section 4785-190, General Code, does not prohibit the circulation of a card to further the candidacy of a candidate, which card is three inches wide and six inches long and printed on blotting paper which is glazed on one side.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

2021.

CORPORATION—REALTY—CERTIFICATE FOR PERPETUAL SUCCESSION MUST BE FILED WITH SECRETARY OF STATE BEFORE EXPIRATION OF CHARTER.

**SYLLABUS:**

*Under the provisions of Section 8623-134, General Code, a corporation heretofore formed to buy or sell real estate may amend its articles so as to provide for perpetual succession by taking all the steps therein provided at any time during its existence, and there is no authority for filing with the Secretary of State the certificate therein required after the expiration date of the charter of such corporation.*

COLUMBUS, OHIO, June 24, 1930.

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

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

"The H. Realty Company of Columbus, Ohio, was incorporated May 16, 1905. By limitation of old Section 8648, et seq. of the Code, the charter of the company expired by limitation on May 16, 1930.

There has been submitted for filing the enclosed certificate to provide for perpetual succession under present Section 8623-134. Please note that the certificate recites that the action was taken by the shareholders at a time within the twenty-five year period after the filing of its articles, viz: December 26, 1929. I am informed by counsel for the company that the certificate was turned over to Mr. H. for filing but due to his leaving for a trip around the world at about that time the certificate was not filed and not discovered until after May 16, 1930.

I have before me Opinion No. 3098 of your predecessor in office, Mr. Turner, Opinion being under date of January 5, 1929. That opinion while concerning the matter of providing for perpetual succession, has to do with

an entirely different state of facts. Under old Sections 8648, et seq., the action of the shareholders in providing for further succession was not made the determining factor but rather the filing of the certificate in this office. G. C. 8623-134 does not contain limiting language but is to the effect that a corporation formed to buy and sell real estate may under the terms of the section provide for perpetual succession at 'any time during its existence.' Please advise me as to whether or not the enclosed certificate may be filed at this time which as indicated above is at a time after the expiration of the twenty-five years of corporate existence stipulated by the company's articles and the Code sections mentioned."

Section 8648, General Code, as in force and effect prior to the enactment of the General Corporation Act in the year 1927, limited the life of the corporation in question to twenty-five years. It provided, insofar as pertinent, as follows

"A corporation formed to buy or sell real estate, shall expire by limitation in twenty-five years from the date on which its articles of incorporation were issued by the secretary of state unless before twenty-four years from the date on which such articles were issued the corporation shall file with the secretary of state a certificate that a meeting of its stockholders called for the purpose of considering a renewal of the charter three-fourths of all the votes cast at the meeting were in favor of a renewal of the charter in which case the corporation may continue with the same powers and subject to the same obligations as when originally created for an additional period of twenty-five years and the secretary of state shall issue a certificate of renewal of its articles of incorporation for such period. \* \* \* ."

Section 8623-134, General Code, being part of the General Corporation Act, provides:

"A corporation heretofore formed to buy or sell real estate may at any time during its existence amend its articles so as to provide for perpetual succession, by a vote of three-fourths of all shares voted at a meeting of its shareholders called for that purpose, and upon filing with the secretary of state a certificate signed by its president or a vice-president, and its secretary or an assistant secretary, setting forth the amendment so made, such corporation shall have perpetual succession."

The opinion rendered on January 5, 1929, to which you refer, appears in Opinions of the Attorney General for the year 1928, Vol. IV, p. 2982, the syllabus of which is as follows:

"A corporation formed to buy and sell real estate expired by limitation, by virtue of Section 8648 of the Code, prior to its repeal by the 87th General Assembly, unless before the expiration of twenty-four years from the date on which its articles were issued the corporation filed a certificate with the secretary of state showing proper action taken by the stockholders in favor of the renewal of the charter."

While this opinion considered the requirement of Section 8648, supra, that the certificate extending the life of a corporation formed to buy and sell real estate must be filed with the Secretary of State before twenty-four years from the date of incorporation, Section 8623-134, supra, was quoted and the following comment made:

"It is to be observed that a corporation formed to buy or sell real estate

may, under the terms of this section, provide for perpetual succession '*at any time during its existence.*' The conclusion is obvious that the action must be taken during the existence of the corporation and not after it has ceased to exist."

The question becomes one of whether or not the action is taken within the meaning of Section 8623-134, supra, until the certificate therein provided is filed with the Secretary of State. Under the provisions of this section, it is apparent that a corporation heretofore formed to buy or sell real estate must do two things during its existence before it may amend its articles so as to provide for perpetual succession: First, it must vote upon the question as therein provided, and, second, it must file the certificate therein described. The section expressly states that such corporation shall have perpetual succession only upon the filing with the Secretary of State of such certificate. I think it is clear that the legislature contemplated that all the things to be done to effectuate such purpose should be done during the existence of the corporation, which is to say, prior to the expiration of the charter. Section 8623-134, supra, contains no provision for the reinstatement of a charter which has expired, but, on the contrary, expressly refers to the extension of the life of a charter of a corporation at any time during its existence.

The view that a corporate act is not completed where one of the things to be done to consummate such act is the filing of a certificate or exhibit in the office of the Secretary of State until such certificate or exhibit is actually filed, is strengthened by a consideration of Section 8623-15 of the General Corporation Act, as amended by the 88th General Assembly. Although this section relates to general proceedings to amend articles of incorporation, it contains, inter alia, the following language:

"Upon the adoption of any amendment, a certificate containing a copy of the resolution adopting such amendment and a statement of the manner of the adoption of such resolution shall be filed in the office of the secretary of state, and thereupon the articles shall be deemed amended according to such resolution and any change of shares provided for therein shall become effective."

I am not unmindful of the fact that a construction of Section 8623-134 to the effect that the certificate must be filed prior to the expiration of the charter in each instance seems perhaps technical when the interval of time between the expiration of the charter and the filing of the certificate is only a matter of days, but it must be borne in mind that if this section authorizes such certificate to be filed one or two days after the expiration of a charter, there is nothing in it to preclude the filing of such certificate three or four years after such expiration date. As hereinbefore indicated, I do not believe that such was the intention of the legislature.

Specifically answering your question, it is my opinion that under the provisions of Section 8623-134, General Code, a corporation heretofore formed to buy or sell real estate may amend its articles so as to provide for perpetual succession by taking all the steps therein provided at any time during its existence, and there is no authority for the filing with the Secretary of State of the certificate therein required after the expiration date of the charter of such corporation.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*