

3098.

CORPORATION—REAL ESTATE—EXPIRATION OF CHARTER—RENEWAL CERTIFICATE TO BE FILED 24 YEARS FROM DATE OF ORIGINAL CHARTER.

SYLLABUS:

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.

COLUMBUS, OHIO, January 5, 1929.

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

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“There has been submitted to me for filing a certificate intended for the renewal for a period of twenty-five years of a corporation which was incorporated under old Code Sections 8648-49-50, which were repealed by the general corporation act. You will note that recitals of the certificate are all as of or concerning action prior to December 13, 1923, and within the twenty-four year period mentioned in Section 8648. Through some inadvertence this certificate was not offered for filing to the Secretary of State until this time.

Can the certificate now be accepted and filed, and if so filed will it effect the intended renewal of the company's articles for a further period of twenty-five years after June, 1925?

The earliest possible attention is requested to the above and it is also requested that the enclosed certificate be returned, accompanied by two copies of your reply.”

I need not quote the certificate which you enclose. It recites action taken by the stockholders of the corporation which was originally formed for the purpose of dealing in real estate. This action is represented to have been taken December 13, 1923, and the certificate of this action, signed by the president and secretary, is now presented to your office for filing.

Section 8648 of the General Code, prior to its repeal by the last General Assembly, read 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. Ten days' notice of the time and place of holding such meeting and the object thereof shall be given by registered letter containing a written or printed notice addressed to each of the persons in whose names the stock of the corporation stands on its books and also by like notice published in some newspaper in the city or village where the corporation has its principal office or place of business. When all the stockholders are present at such meeting in person or by proxy, notice may be waived in writing. For each share of stock on which all the installments called for by the board of directors are paid the holder thereof shall be entitled to one vote and the voting shall be by ballot cast in person or by proxy."

Sections 8649 and 8650 made provision for certain procedure to be taken in the event of the expiration of such a corporation by the limitation imposed under Section 8649, supra. It is clear from the language of the statute quoted above that a corporation formed to buy or sell real estate had a life limited to twenty-five years, the only exception being in the event that prior to twenty-four years from the date the articles were originally issued to the corporation a certificate should be filed with the Secretary of State, setting forth action by the stockholders in favor of a renewal of the charter. The action of the stockholders is not made the determining factor, but the statute specifically provides that the *certificate must be filed* within such time limitation in order to extend the life of the corporation.

The language of the section is so explicit that there is no warrant, in my opinion, for concluding that the Legislature did not intend these provisions to be mandatory. It follows, accordingly, that the failure to file a certificate before twenty-four years from the date of the issuance of the original articles of incorporation resulted in the automatic expiration of the life of the corporation at the end of twenty-five years. The fact that the stockholders actually took the action prior to the expiration of twenty-four years, does not cure the situation. Since the corporation ceased to be a corporation at the end of twenty-five years, the certificate which is now presented has no legal effect.

The foregoing conclusion is reached without considering the fact that the sections of the Code, to which reference has been made, have all been repealed. In my opinion this repeal is of no significance in connection with the facts you present, since at the time the existence of the corporation terminated, the statute was in full force and effect. Particularly is this true in view of the fact that these sections were repealed in connection with the enactment of the new general corporation act, which contains Section 8623-136 of the Code, as follows:

"This act shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed."

Clearly the corporation in this instance had, by reason of the provisions of Section 8648 of the Code, supra, ceased to have existence long prior to the enactment of the general corporation act. Accordingly, the status of the corporation was not in any way changed by reason of the repeal of Section 8648, since the language of Section 8623-136 conclusively preserves the status of matters occurring prior to the enactment of the general corporation act. The repeal of Section 8648, therefore, cannot be treated as affecting the resuscitation of the corporation already long out of existence.

I may also call your attention to Section 8623-134, General Code, also a part of the general corporation act, as follows:

"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."

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.

You are accordingly advised that there is no authority to receive and file the certificate presented to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3099.

SCHOOL PROPERTY—WHEN AND HOW SOLD WHEN SCHOOL SUSPENDED BY CENTRALIZATION—DEED OF CONVEYANCE TO BOARD OF EDUCATION—REVERSIONS—SPECIFIC DEEDS CONSTRUED.

SYLLABUS:

1. *When centralization of schools has been authorized in a school district, all schoolhouses and school lots owned by the board and not utilized in the plan of centralization adopted by the board may be sold at once, without waiting for the four-year period spoken of in Section 7730-1, General Code, to elapse.*

2. *A declaration, in a conveyance of lands, of the purpose for which the conveyance was made or for which the granted land is to be used, does not in and of itself render the grant conditional. Thus, a grant of land "for school purposes" will not be construed as a grant on a condition subsequent, where there are no words indicating an intent that the grant shall be void if the declared purpose is not fulfilled.*

3. *Lands deeded to a board of education to be used for school purposes, with an express condition of reverter or a reserved right of re-entry by the grantor upon abandonment of such use, revert to the grantor or his heirs.*

4. *Lands deeded to a board of education to be used for school purposes, without an express condition of reverter or a reserved right of re-entry by the grantor, if conveyed for a valuable consideration and containing words of perpetuity, vest in the board of education as a fee simple estate and do not revert to the grantor or his heirs upon abandonment of such use.*

5. *The word "assigns" is without legal effect in a limitation to "one and his heirs" or to a corporation "and its successors," although it is customary to add the words "and assigns" or "and assigns forever."*

6. *Under the deeds considered in this opinion, the grantees, the Board of Education of Fairfield Township, Butler County, Ohio, may sell and convey a fee simple title to the premises therein described.*