

353.

CORPORATION—NOT FOR PROFIT WITH PURPOSE CLAUSE INDICATING SUCH FACT—CANNOT AMEND ARTICLES TO BECOME CORPORATION FOR PROFIT—EXCEPTION NOTED.

SYLLABUS:

*When articles of incorporation have been filed in the office of the Secretary of State as a corporation not for profit, which articles contain a purpose clause clearly setting forth purposes of a corporation not for profit, such corporation may not, by amendment, change from a corporation not for profit to a corporation for profit, unless provision was made in the original articles authorizing a substantial change in the purpose or purposes for which the corporation was formed. Under the foregoing facts, such a change is a substantial change within the meaning of Section 8623-14, General Code.*

COLUMBUS, OHIO, April 26, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

“Your opinion is respectfully requested as to whether or not a corporation heretofore one not for profit may, by amendment, become a corporation for profit and in its amendment provide for the issuance of shares.

You will find herewith copy of proposed amendment to the articles of The Mt. Pleasant Retail Grocers Association, which proposed amendment seeks to make the change above referred to.

Your recent opinion in connection with the filing of amendment changing a corporation technically one for profit to one not for profit does not answer the question raised by the enclosed proposed amendment.

In passing, your attention is called to the fact that the corporation in question was incorporated December 19, 1927, at which time the present General Corporation Act was in effect and at which time a corporation not for profit could not in its original articles provide for shares. Please let your opinion answer the question not only in connection with a corporation not for profit organized since the General Corporation Act went into effect, but also one organized before. At that time, as you know, it was possible for a corporation not for profit to provide for shares.”

The certificate of amendment submitted with your letter sets forth the following resolution of amendment:

“Be it resolved that The Mt. Pleasant Retail Grocers Association amend its Articles of Incorporation in addition to all the other purposes for which the corporation was formed:

That the said corporation The Mt. Pleasant Retail Grocers Association be formed from a corporation not for profit to a corporation for profit.

Also that the capital stock of the said The Mt. Pleasant Retail Grocers Association shall be \$10,000.00 divided into two hundred (200) shares of \$50.00 each.

And further that the president and secretary of said corporation be instructed to file a certificate of such amendment with the Secretary of State.”

An investigation of the records of your office discloses that the original articles of incorporation of this company contained a purpose clause as follows:

“Said corporation is formed for the purpose or purposes of fostering and extending the retail grocer’s trade of said city, encouraging wise and needful legislation, and opposing the enactment of laws and ordinances prejudicial to the retail grocer’s interests of said city; giving and exchanging information among its members; promoting the social intercourse among persons engaged in the retail grocer’s trade and the doing of all things necessary or incident thereto.”

In your letter you refer to my opinion to you under date of March 6, 1929, being Opinion No. 158, the syllabus of which is as follows:

“When articles of a corporation have been filed in the office of the Secretary of State, purporting to be a corporation for profit, but which contain a purpose clause which clearly sets forth a purpose which is not only evidently that of a corporation not for profit, but which precludes the exercise of any purpose for profit, and which corporation has, pursuant to such organization, acted solely as a corporation not for profit, its articles may be amended to eliminate such contradictory statements and set forth that it is, in fact, a corporation not for profit.”

In commenting upon the general question of amending articles of incorporation of a corporation, changing such corporation from one for profit to one not for profit, as then under consideration, the following language was used:

“Unquestionably, under ordinary circumstances, any amendment of the articles of incorporation of a corporation changing such corporation from a corporation for profit to one not for profit would be such a substantial change as would not be permitted under Section 8623-14, General Code, *supra*.”

The question here presented is the reverse of the question considered in my earlier opinion. However, the principles involved are the same. A consideration of these principles as set forth in the above syllabus as applicable to a corporation originally incorporated as a corporation not for profit, which seeks to become a corporation for profit by amendment, would result in the following conclusions:

When articles of incorporation have been filed in the office of the Secretary of State purporting to be a corporation not for profit, but which contain a purpose clause which clearly sets forth a purpose which is not only evidently that of a corporation for profit, but which solely contemplates engaging in business for profit and which corporation has, pursuant to such organization, acted solely as a corporation for profit, its articles may be amended to eliminate such contradictory statements and set forth that it is, in fact, a corporation for profit.

A consideration of the original purpose clause of this association discloses no purpose which could be said to be exclusively a purpose of a corporation for profit. There appears to have been no error in filing these articles as a corporation not for profit; there is nothing in the purpose clause to indicate that this association was organized for any purpose other than that of a corporation not for profit. Furthermore, there is apparently no claim that this association has proceeded under its articles as a corporation for profit and it therefore seems very apparent that the proposed amendment which you submitted does not, in any conceivable way, raise a question

parallel to the one submitted heretofore and discussed in my earlier opinion. I again call your attention to the language used therein to the effect that, under ordinary circumstances, any amendment of the articles of incorporation of a corporation seeking to change such corporation from one for profit to one not for profit, or from one not for profit to one for profit, would be such a substantial change as would not be permitted under Section 8623-14, General Code, unless the original articles provided otherwise. It should be noted that the original articles of this association made no provisions for substantially changing the purposes as therein set forth.

In view of the foregoing, I am of the opinion that your office has no authority to file the certificate of amendment submitted, as such amendment contemplates a substantial change within the meaning of Section 8623-14, General Code.

It, therefore, follows that the question of when the corporation was organized is not pertinent.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

354.

LICENSE PLATES FOR MOTOR VEHICLES—CORPORATION LEGALLY  
TAKING OVER VEHICLES OWNED BY ANOTHER CORPORATION  
MUST PROVIDE NEW PLATES.

*SYLLABUS:*

*The Railway Express Agency Inc. which took over by legal transfer the motor vehicles formerly owned and used by the American Railway Express Company in the conduct of its business in this state, is required to make application for the registration of such motor vehicles before permitting the same to be driven upon the public roads, highways and streets of this state, and to pay therefor the proportion of the normal tax with respect to said several motor vehicles provided for by Section 6295, General Code.*

COLUMBUS, OHIO, April 26, 1929.

HON. CHALMERS R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication, which is as follows:

“Pursuant to our conference a few days ago with a representative of your office, relative to the change that is being made, whereby the express company which has been known as the ‘American Railway Express Company’ is being changed to ‘Railway Express Agency, Inc.’, you will find herewith enclosed statement of the superintendent of such company at Columbus and Toledo, Ohio, such statement being what they proposed to submit in writing at the time of such conference.

In order that there may be no question as to the position of this department, it is desired that you submit an opinion as to whether this department should require new automobile license plates for the motor vehicles which are to be transferred from one name to the other, or whether the Department may permit the transfer of license plates already issued to the ‘American Railway Express Company’ to the ‘Railway Express Agency, Inc.’”