

It is therefore the opinion of this department that in order that a board of trustees must be appointed under the provisions of section 4067 to manage a park or the funds in relation thereto, it is necessary that such requirements be made in the instruments granting the park or the funds for such park.

Coming now to an analysis of the language set forth in the conveyance or gift to which you refer, it would seem to be clear that the direction is that the executors of the estate of the donor are to secure a park site and direct the executor and trustees to contribute one thousand dollars to a band stand to be erected in the park. All of these directions refer to the trustee and executor appointed by the donor under his will, and do not in any wise refer to the trustees that are mentioned in section 4066. Inasmuch as section 4326 provides that the director of public service shall manage parks in those cases in which trustees are not required under the provisions of section 4067, and in which a park commission has not been established under the provisions of section 4053, et seq., it would seem to be the duty of the director of public service to manage the park which you describe.

Respectfully,

C. C. CRABBE,
Attorney General.

2436.

CORPORATION FOR PROFIT—QUESTIONS PERTAINING TO ARTICLES OF INCORPORATION OF B. F. KEITH COMPANY DISCUSSED. SECTIONS 8728-5 AND 8698 CONSTRUED.

SYLLABUS:

A corporation for profit organized under the laws of this state with a nominal par value stock, either common or preferred or both, is not authorized to change its form of incorporation to provide for common stock without nominal or par value, except by the plan of reorganization as provided in section 8728-5 of the General Code of Ohio and incorporation fees regularly charged under the first plan of incorporation may not be applied in any manner in satisfaction of the fees provided in the later plan of incorporation.

COLUMBUS, OHIO, May 5, 1925.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication requesting the opinion of this department as follows:

“On the 18th day of November, 1924, Articles of Incorporation for ‘The B. F. Keith Columbus Company’ were filed with the Secretary of State providing for an authorized capital stock of \$1,500,000.00, half common and half preferred, the shares of such stock to have a par value of \$100.00 each. Upon the filing of these articles a fee of one-tenth of one per cent of said authorized capital stock, to-wit: \$1,500.00 was paid the Secretary of State. No other papers have been filed. It is now desired to change the authorized capital stock of this company to ten thousand shares of no par value common stock and eliminating the preferred.

Kindly advise this office if there is a method by which this can be accomplished, other than by reorganization under the provisions of section 8728-5 of the General Code of Ohio."

From the facts stated in your letter it is observed that the corporation has not yet completed its organization, but it has paid the fee of one-tenth of one per cent of the authorized capital stock, which I am informed has been paid into the state treasury.

It is proposed to change the form of the corporation from a nominal par value basis of one hundred dollars per share for both the common and preferred stock to that of no par common stock.

I am informed that it is also sought to have the benefit of the fees already paid, applied to the new form of corporation, or to be returned in part.

Section 8728-5 G. C. providing for reorganization is in part as follows:

"Any corporation for profit heretofore or hereafter organized under the general incorporation laws of this state, other than corporations belonging to one of the classes specifically excepted by section 8728-1, may be reorganized so that such corporation, its officers, directors and stockholders shall acquire and enjoy all the rights, privileges, powers and exemptions, and become subject to all of the liabilities and obligations imposed by this act, upon the filing and recording in the office of the secretary of state, a certificate of reorganization of the company, pursuant to this act* * *."

It is provided in section 8728-9 G. C. that:

"No proceedings taken under section 6 of this act shall be deemed to work a dissolution, or to create a new corporation or to interrupt in any way the continuity of existence of the corporation affected."

However, it would be necessary for this corporation to complete its organization before there would be any one authorized to take proper action for any of the purposes under this chapter, or for the purpose of dissolution of the corporation. Completing the organization to authorize some one to act for and on behalf of the company of course would include the payment of the fees for its incorporation, which in this instance, have already been paid.

Section 8698 G. C. provides for the changes in capital stock by the incorporation of same and outlines the procedure therefor, including the issue of preferred stock within the limits permitted by law, but there is no rule included therein or authority given to change the character of the stock, as is sought in this instance.

It is believed that there is no method under the law of Ohio by which the purposes sought here can be accomplished other than by reorganization under the provisions of section 8728-5 of the General Code of Ohio..

Respectfully,

C. C. CRABBE,

Attorney General.