

5530.

APPROVAL—CERTIFICATE OF AMENDMENT TO THE
ARTICLES OF INCORPORATION OF THE GUARANTEE
MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, May 14, 1936.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the certificate of amendment to the articles of incorporation of the Guarantee Mutual Insurance Company which you have submitted to me for my approval.

Finding the same not to be inconsistent with the Constitution or laws of the United States or of the State of Ohio, I am herewith returning the same to you with my approval endorsed thereon.

Yours very truly,

JOHN W. BRICKER,
Attorney General.

5531.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO,
\$10,000.00.

COLUMBUS, OHIO, May 15, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5532.

BUILDING AND LOAN ASSOCIATION—STOCKHOLDERS
MAY VOTE CUMULATIVELY WITHOUT GIVING NOTICE.**SYLLABUS:**

Shareholders in building and loan associations may cumulate their votes in the election of directors without giving notice, pursuant to the provisions of Section 8623-50 of the General Code of Ohio, of their intention so to do.

COLUMBUS, OHIO, May 15, 1936.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent request for my opinion which reads as follows:

"Section 9649, General Code, permits cumulative voting for the election of directors of a building and loan association.

The General Corporation Laws provide that if a stockholder intends to cast his vote in a cumulative manner, twenty-four hours' notice must be given of such intent.

Kindly advise me if this notice applies to the election of directors in a building and loan association."

Section 8623-50 of the General Code is a part of the General Corporation Act, and provides, in part, as follows:

"If notice in writing shall be given by any shareholder to the president or a vice-president of a corporation not less than twenty-four hours before the time fixed for holding a meeting for the election of directors that he intends to cumulate his votes at such election, and if an announcement of the giving of such notice is made upon the convening of the meeting, each shareholder shall have the right to cumulate his shares and to give to one candidate as many votes as the number of electors to be elected multiplied by the number of his shares equals, or to distribute them on the same principle among as many candidates as he sees fit.

Such right to vote cumulatively shall not be further restricted or qualified by any provisions in the articles or regulations."

The provision with respect to the giving of notice of intention to cumulate votes was passed by the legislature on February 16, 1927 (112 O. L., 30).

Prior to that time the law (G. C. 8635) provided for cumulative voting in the election of directors, but required no notice of intention to so vote. It follows that prior to that date the right to cumulate votes in the election of directors was unrestricted.

Section 9649 of the General Code is a part of the Building and Loan Code, and as amended June 29, 1934, its applicable part reads:

“Each member may vote his stock or fractional part thereof to the extent and in the manner provided by the constitution and by-laws, and each member may cumulate his votes in the election of directors.”

Prior to said amendment, Section 9649 read :

“Each member may vote his stock to the extent and in the manner provided by the constitution and by-laws, but no member shall cumulate his votes.”

The right to cumulate votes did not exist at common law, but the Supreme Court of Ohio has recognized the right of the legislature to provide for voting in this manner.

In the case of *Schwartz v. State, ex rel. Schwartz*, 61 O. S., 497, the syllabus reads :

“In the election of directors of a corporation the cumulative voting of shares is authorized by Section 3245, Revised Statutes, as amended April 23, 1898 (93 O. L., 230), and one receiving a majority of the votes so cast is elected a director, though he does not receive the votes of the holders of a majority of the shares.”

In the opinion, page 505, it is stated :

“Before the amendment of the statute it was held in *State v. Stockley*, 45 Ohio St., 304, that the statute did not authorize cumulative voting at elections of directors of corporations.”

In the case of *State v. Stockley*, 45 O. S., 304, cited in the *Schwartz* case, *supra*, the Court says at page 306 :

“The right of cumulative voting at the election of a board of directors, does not exist, unless conferred by express provision; each shareholder can cast but one vote on each share for each member of the board, whether he votes for one or all of them.”

On page 308 we find the following :

“If the legislature had intended to abrogate this mode, and establish the cumulative system of voting, it easily could, and doubtless would, have done so in plain and unambiguous language.”

In the case of *State, ex rel. Price, Attorney General, v. Du Brul*, 100 O. S., 272, at page 276, it is stated:

“For a number of years we have had engrafted in our law the principle of cumulative voting for the election of corporate directors. This voting rule abrogates the old common law rule
* * *”

The *De Brul* case, *supra*, was decided July 8, 1919, and construed Section 8636 of the General Code, which formerly was Section 3245 of the Revised Statutes, referred to in the *Schwartz* case, *supra*.

The cases above cited involved general corporations, but the same principles applying to building and loan associations in so far as legislative power is concerned. The legislature saw fit to permit such system of voting in general corporations and to deny it in building and loan associations by express terms until the amendment of Section 9649, General Code, in 1934, above referred to.

In so denying, the legislature did not merely declare the common law rule, but also indicated its intention that the provision of the General Corporation Act then existent relative to cumulative voting should not apply to building and loan associations.

Inasmuch as Section 9649, General Code, provides for cumulative voting without any restrictions, it would seem that Section 8623-50, General Code, could not apply except by virtue of Section 9643 of the General Code, the pertinent part of which reads as follows:

“A corporation for the purpose of raising money to be loaned to its members, and others, shall be known in this chapter (General Code Sections 9643 to 9675) and in the laws relating to the department of building and loan associations, as a ‘building and loan association’ or as a ‘savings association.’ * * *

Associations may be organized and conducted under the general laws of Ohio relating to corporations, *except as otherwise provided in this chapter*; * * *” (Italics the writer’s.)

“This chapter”, referred to in said section, has reference to Chapter I, Title IX, Division IV of the General Code, providing for the organization and defining the powers of building and loan associations. The sections embraced within this chapter constitute what is commonly known as the King Law, enacted in 1923, the title of the Act reading:

“For the better regulation, management and inspection of building and loan associations * * *”

It seems clear that in the absence of any provision in the building and loan law relative to cumulative voting, the provisions of said Section 8623-50 of the General Code would apply, and notice would have to be given.

In this connection, reference should be made to the provisions of Section 8623-132, which is a part of the General Corporation Act, and which reads as follows:

“When special provision is made in the General Code for the incorporation, organization, conduct or government of corporations formed for any specified purpose, this act shall not apply, but the special provision shall govern unless it clearly appears that the special provision is cumulative.”

There can be no question but that building and loan associations are organized for a specified purpose under special provisions of the General Code, and that the provisions of Section 9649, General Code, shall govern the matter of cumulative voting, unless it clearly appears that such special provision is cumulative to the provisions of the General Corporation Act covering the same subject matter as set forth in Section 8623-50 of the General Code.

Up to the time of the amendment of Section 9649 in 1934, the Building and Loan Code expressly denied the right to cumulate votes, and of course the General Corporation Act could not apply because the two provisions were completely antagonistic and could not be reconciled.

The provisions of the General Corporation Act requiring the giving of notice were in full force and effect at the time of the amendment of Section 9649 in 1934. Up to that time the provisions of the General Corporation Act had not applied to building and loan associations so far as cumulative voting was concerned; in fact, the legislature had taken pains to provide against their application. In language clear and unambiguous it granted to shareholders in building and loan associations the right to cumulate their votes in the election of directors, using practically the same language it had used in granting such right to general corporations prior to the notice provisions.

To paraphrase the quotation of the court in 45 O. S., 304, *supra*, it can be said, “If the legislature had intended to restrict or qualify the right of cumulative voting in building and loan associations it would, and doubtless would, have done so in plain and unambiguous language.”

The General Corporation Act is applicable where there is an absence of a specific provision in the Building and Loan Code, or where it is necessary to resort to the provisions of said Act to carry into full force and effect some authority granted to a building and loan association. It was certainly not intended that where full and complete power is granted

in the Building and Loan Code, that resort should be had to the General Corporation Act to limit, qualify or restrict such granted power.

The Building and Loan Code provides for unlimited, unqualified and unrestricted cumulative voting in the election of directors. The General Corporation Act provides for limited, qualified or restricted rights. To the extent that said provisions are inconsistent "it is otherwise provided" in the Building and Loan Code, and by the force of Section 9643, General Code, the provisions of the General Corporation Act do not apply.

In the light of the plain provisions of Section 9649, it seems apparent that it does not "clearly appear" that the special provisions of said section are cumulative, but on the contrary that such special provisions are exclusive.

It is my opinion, therefore, in specific answer to your question, that shareholders in building and loan associations may cumulate their votes in the election of directors without giving notice, pursuant to the provisions of Section 8623-50, General Code, of their intention so to do.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5533.

APPROVAL—CONDITIONALLY, CERTIFICATE OF TITLE,
ETC., TO LAND IN GREEN TOWNSHIP, SUMMIT COUNTY,
OHIO—WILLIAM L. BICKETT AND MARY O. BICKETT.

COLUMBUS, OHIO, May 15, 1936.

HON. CARL G. WAHL, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted a certificate of title issued by The Northern Ohio Guarantee Title Company of Akron, Ohio, under date of March 23, 1936, at 7:30 a. m., requesting my opinion as to the status of the title to two parcels of land situated in the Township of Green and County of Summit, which said lands William L. Bickett and Mary O. Bickett propose to convey to the State of Ohio for Nimisila Reservoir purposes. Reference is made to said abstract for a definite description of said lands.

After examination, it is my opinion that said certificate of title at the date thereof discloses a good and sufficient title in the said William L. Bickett and Mary O. Bickett, subject to the following:

Under date of June 3, 1925, the predecessor in title of the said