

clerk of courts to pay to the persons entitled thereto the fees of the magistrate and his officers only when the same are collected by the clerk.

While Section 3019 of the General Code provides:

“In felonies wherein the state fails, and in misdemeanors wherein the defendant proves insolvent, the county commissioners, at the first meeting in January, shall make an allowance to justices of the peace and constables, in the place of fees, but in no year shall the aggregate allowance to such officer exceed the fees legally taxed to him in such causes, nor in any calendar year shall the aggregate amount allowed such officer and his successor, if any, exceed one hundred dollars. If there be a successor, said amount shall be prorated on the basis of lost fees.”

there is no section authorizing a like allowance to mayors and police officers of municipal corporations.

Answering your third question specifically it is my opinion that there is no authority of law for the payment from the county treasury, to the mayor and marshal of a municipal corporation, of fees of such officials incurred in any state case, whether the defendant be convicted or acquitted. By the terms of Section 3016, General Code, in felonies, and in minor state cases which have come to the Court of Common Pleas through a mayor's court, where the defendant is convicted, the fees of such mayor and his officers should be inserted in the judgment of conviction and *when collected* should be disbursed by the clerk of courts to the person entitled thereto.

Respectfully,

EDWARD C. TURNER,
Attorney General.

722.

GENERAL CORPORATION ACT—FEES FOR FILING ARTICLES OF INCORPORATION.

SYLLABUS:

Where, in articles of incorporation filed with the Secretary of State, authority is given to split up the number of shares into fractional shares with all the incidents of stock ownership in such fractional shares, the fee to be charged by the Secretary of State for the filing and recording of such articles of incorporation should be based upon the highest possible number of such fractional shares authorized to be issued.

COLUMBUS, OHIO, July 11, 1927.

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

DEAR SIR:—This will acknowledge your recent communication in which you ask my opinion as to the proper fee to be assessed against a corporation which has recently submitted its articles of incorporation to you. The pertinent part of the articles is as follows:

“FOURTH: The maximum number of shares which the Corporation is authorized to have outstanding is Forty-Five Hundred Shares, which shall be classified as follows:

(a) Twenty-Five Hundred Shares of Preferred Stock of the par value of \$80.00 each.

(b) Two Thousand Shares of Common Stock, no par value.

* * * * *

The Corporation at its option in pursuance of a resolution of the incorporators before organization, or the board of directors after organization, may issue the Preferred Stock in fractional quarter shares at its par value of Twenty Dollars each, and the Common Stock in fractional one-twentieths of a share."

In addition to the portion just quoted there is a provision later on in the articles in the following language:

"The holder of Common Stock shall be entitled to Twenty votes per share, and one vote for each fractional twentieth of a share that are issued and outstanding."

Under the provisions of Section 176 of the General Code, as amended in Amended Senate Bill No. 284, the fee to be charged by the Secretary of State for filing and recording articles of incorporation is as follows:

"* * * * *

1. For filing and recording articles of incorporation of a corporation having authorized shares of stock, with or without par value, a fee equal to the sum of

(a) Ten cents for each share authorized up to and including ten thousand shares;

(b) Five cents for each share authorized in excess of ten thousand shares up to and including fifty thousand shares;

(c) Three cents for each share authorized in excess of fifty thousand shares up to and including one hundred thousand shares;

(d) Two cents for each share authorized in excess of one hundred thousand shares up to and including one hundred and fifty thousand shares;

(e) One cent for each share in excess of one hundred and fifty thousand shares.

In no event, however, shall the fee be less than twenty-five dollars.

* * * * *

In your letter you state that it is the contention of the attorneys representing the the company in question that the fee should be based upon the forty-five hundred shares stated in the articles of incorporation, in spite of the option given to the incorporators and the board of directors to issue fractional quarter shares of preferred stock and fractional one-twentieths of a share of common stock.

It is perfectly obvious from the portion of the articles of incorporation above quoted that it is within the discretion of the board of directors to issue, under the authority conferred by the articles so filed, ten thousand shares of preferred stock of the par value of \$20.00 each and forty thousand shares of common stock without par value. In effect, therefore, these articles specifically authorize the issuance of an aggregate of fifty thousand shares.

The authority to issue fractional shares is conferred by Section 30 of the new Corporation Act, the pertinent part of which is as follows:

"* * * * *

A corporation may, but shall not be obliged to, issue a certificate for a

fractional share, and by action of its board of directors may issue in lieu thereof scrip or other evidence of ownership which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip or evidence of ownership aggregating a full share, but which shall not, unless otherwise provided, entitle the holder to vote or to receive dividends.

* * * * *

I think it is clear from a reading of this portion of the section that the issuance of fractional shares therein provided for is a mere temporary expedient and that it was not within the contemplation of the legislature to authorize a general plan of fractional issues such as is provided in the articles in question. That the shares in the present instance are not, in reality, fractional shares at all, is disclosed by the provision as to voting right which I have hereinabove quoted from the articles. The fractional one-twentieth share of common stock is entitled to one vote and what is denominated as a full share is given twenty votes. In truth and in substance, therefore, the certificate for one share would represent twenty shares of no par value.

In like manner it may be stated as to the preferred shares that a certificate for one share would in reality represent four shares of the par value of \$20.00 each.

It seems apparent that this plan has been adopted for the specific purpose of avoiding the payment of the legitimate fees as provided in section 176 of the General Code from which I have quoted. I have no difficulty in looking through the form to the substance of the articles of incorporation. While it is specifically stated that the maximum number of shares which the corporation is authorized to have outstanding is forty-five hundred shares, this is clearly contradicted by the subsequent provisions for the issuance of fractional shares.

The authority conferred by the articles as filed is to issue a total of fifty thousand shares, and you are therefore advised that the proper fee for the filing of the articles would be ten cents for each share up to and including ten thousand shares and five cents for each additional share, which would make an aggregate of three thousand dollars.

Respectfully,
EDWARD C. TURNER,
Attorney General.

723.

HOUSE BILL No. 177—EFFECTIVE DATE.

SYLLABUS:

House Bill No. 177, by virtue of the provisions of Section 1d of Article II of the Constitution of Ohio, went into immediate effect.

COLUMBUS, OHIO, July 11, 1927.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

“A question of considerable importance has been unexpectedly presented to the commission involving the determination of the time at which the recent act of the General Assembly, formerly House Bill No. 177, has gone, or will go, into effect.