

1180.

CORPORATION—ARTICLES CANCELLED AND NOT REINSTATED—  
CERTIFICATES NECESSARY TO BE FILED BEFORE DISSOLUTION  
GRANTED.

## SYLLABUS:

*Under the provisions of Sections 8623-79 and 8623-80, General Code, as amended by the 88th General Assembly, when the articles of a corporation were cancelled February 15, 1926, for failure to file annual franchise tax returns or excise tax returns, or failure to pay franchise or excise taxes, and such corporation has not been reinstated, such corporation may voluntarily dissolve upon the filing of a certificate as therein provided to which is attached a receipt, certificate or other evidence showing the payment of all franchise taxes up to January 1, 1926, and the receipt, certificate or other evidence showing the payment of personal property taxes accrued up to the date of filing such certificate of dissolution.*

COLUMBUS, OHIO, November 12, 1929.

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

DEAR SIR:—Your letter of recent date is as follows:

“There has been submitted to this department for filing, certificate of dissolution regular in form, dated October 18, 1929, to effect dissolution of a corporation, the articles of which were cancelled on certificate of the Tax Commission February 15, 1926. With the certificate of dissolution there is a certificate of the county treasurer of Marion County to the effect that real and personal property taxes for the current and previous years have been paid. This certificate is under date of October 7, 1929. Therewith there is also the further certificate of the State Tax Commission certifying that all reports of the corporation have been filed and that all taxes, fees and penalties have been paid through the year 1925.

Section 8623-79 permits the filing of a certificate of dissolution by a corporation, the articles of which have been cancelled without the reinstatement thereof. Section 8623-80 provides that upon the filing of any such certificate (referring to the certificate of dissolution) same shall be accompanied by receipts, certificates or other evidence showing the payment of all franchise and personal property taxes accrued up to the date of such filing.

From the above you will note that the cancellation of the articles of the company in question was made February 15, 1926. The ground for this cancellation was either the failure to make annual return for the year 1925 or the failure to pay annual franchise tax assessed in 1925. I am informed that the practice of the Tax Commission is to assess no franchise taxes against a corporation for the year during which its articles are cancelled, if the cancellation is made at a time prior to the date for which an annual report may be due during that year and for years subsequent thereto. That is, a franchise tax is assessed for the year during which failure to report has occurred, which failure is the basis in most cases, for the cancellation of the articles. If a corporation, subsequent to cancellation files the report, for failure to make which report its articles were cancelled and pays the franchise tax which may be due thereon, it is not thereafter assessed by the Tax Commission unless reinstatement is made.

Having regard to the above and the fact that the corporation in question

has paid the only franchise tax assessed against it by the Tax Commission, may the Secretary of State accept and file the certificate of dissolution accompanied by the certificates which are indicated above?"

Sections 8623-79 and 8623-80, General Code, as amended by the 88th General Assembly, 113 Ohio Laws, 450, 451, in so far as they are pertinent to your question, provide as follows:

Sec. 8623-79—

"A corporation may wind up its affairs and dissolve in the following manner:

(a) \* \* \*

(b) When a corporation has been adjudged to be a bankrupt, or has made a general assignment for the benefit of creditors, or, by leave of the court, when a receiver has been appointed in a general creditors' suit or any suit in which the affairs of the corporation are to be wound up, or when substantially all of the assets have been sold at judicial sale *or otherwise, or when the articles of a corporation have been cancelled for failure to file annual franchise tax returns or excise tax returns, or failure to pay franchise or excise taxes, and such corporation has not been reinstated or does not desire to be reinstated*, the directors, or a majority of them, may file in the office of the Secretary of State a certificate verified by their oath, stating the facts and that they elect to dissolve the corporation.

\* \* \* "

Sec. 8623-80—

"Upon the filing of any such certificate, together with:

(a) Receipts, *certificates or other evidence* showing the payment of all franchise and *personal property* taxes accrued up to the date of such filing; or,

(b) \* \* \* ."

These sections were amended by the insertion therein of the additional provisions in italics. The manifest purpose of the amendments was to provide for such a situation as you present. You state that the articles of the corporation in question were cancelled February 15, 1926, for failure to file annual franchise tax returns or failure to pay annual franchise taxes. I assume from your letter that this corporation has not been reinstated. This cancellation of the articles in 1926 constitutes sufficient authority under Section 8623-79, supra, for the filing of a certificate to effect a voluntary dissolution.

It appears that there has been filed with the certificate of dissolution in question a certificate of the county treasurer of the county wherein I assume the corporation is located to the effect that real and personal property taxes for the current and previous years have been paid, which certificate is under date of October 7, 1929. This certificate complies with the requirement of Section 8623-80, supra, to the effect that there shall be filed with the certificate of dissolution a certificate or other evidence showing the payment of personal property taxes accrued up to the date of such filing. You state that there has also been filed with the certificate of dissolution a certificate of the Tax Commission setting forth the fact that all fees and penalties have been paid for the year 1925. This is apparently indicative of the fact that all franchise taxes have been paid through the year 1925, and the question now becomes whether or not this certificate meets the second requirement set forth in Section 8623-80, paragraph (a), supra, that there shall be filed with the certificate of dissolution "certificates or other evidence showing the payment of all franchise \* \* \* taxes accrued up to the date of such filing." In view of the fact that the articles of this corporation were

cancelled in February, 1926, prior to the time when the annual report for 1926 would otherwise have been filed, which, under Section 5495, is during the month of April, it is evident that no franchise tax was assessed after the year 1925. No such tax having been assessed after the year 1925, it follows that the only franchise taxes which have "accrued" within the meaning of Section 8623-80, supra, are franchise taxes for the year or years preceding the year 1926.

Specifically answering your question, therefore, I am of the opinion that under the provisions of Sections 8623-79 and 8623-80, General Code, as amended by the 88th General Assembly, when the articles of a corporation were cancelled February 15, 1926, for failure to file annual franchise tax returns or excise tax returns, or failure to pay franchise or excise taxes, and such corporation has not been reinstated, such corporation may voluntarily dissolve upon the filing of a certificate as therein provided to which is attached a receipt, certificate or other evidence showing the payment of all franchise taxes to January 1, 1926, and the receipt, certificate or other evidence showing the payment of personal property taxes accrued up to the date of filing such certificate of dissolution.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1181.

APPROVAL, BONDS OF GEAUGA COUNTY—\$39,346.81.

COLUMBUS, OHIO, November 12, 1929.

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

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1182.

APPROPRIATION PROCEEDINGS—NORTON-EDWARDS ACT—PROPERTY OWNER REFUSING MONEY AND PERFECTING APPEAL—DUTY OF HIGHWAY DIRECTOR TO WITHDRAW MONEY DEPOSITED.

*SYLLABUS:*

*When the owner of property appropriated under the provisions of the Norton-Edwards Act (112 O. L., 430), after having been notified as to the amount of compensation and damages, if any, on deposit in the Probate Court, declines to accept the money and elects to, and does perfect an appeal as to the amount of compensation and damages, if any, the Director of Highways should at that time withdraw the amount of money on deposit.*

COLUMBUS, OHIO, November 13, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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