

558.

## CORPORATION—DISSOLUTION OF DOMESTIC CORPORATION—SECTIONS 5509 AND 5511, GENERAL CODE, CONSTRUED.

## SYLLABUS:

1. *The Secretary of State is not authorized to receive and file a certificate of voluntary dissolution of a domestic corporation for profit, as provided by sections 8740 and 8741, if the charter of such corporation has been cancelled by the Secretary of State under section 5509 of the General Code, unless such corporation shall have been reinstated under the provisions of section 5511 of the General Code.*

*It is immaterial whether the action of the stockholders in voting for dissolution was prior or subsequent to the date of the cancellation.*

2. *A corporation may not be reinstated under the provisions of section 5511 after the expiration of the two-year period.*

COLUMBUS, OHIO, July 6, 1923.

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

DEAR SIR:—We acknowledge receipt of your letter of recent date in which you submit two questions:

“(1) May this department receive and file a certificate of dissolution of a domestic corporation for profit under section 8741 of the General Code of Ohio during the cancellation of the charter of such company upon certificate from the Tax Commission of Ohio, or must such a corporation be reinstated pursuant to the provisions of section 5511 of the General Code of Ohio before such certificate of dissolution can be received and filed by this department. May we be advised in the above matter, both where the action of dissolution has been taken by the corporation prior to cancellation and where the action has been taken subsequent to such cancellation?”

Sections 8740 and 8741 of the General Code provide for dissolution of a corporation by voluntary action of the officers of that corporation. The filing of the certificate in question is required in order that the Secretary of State may have an accurate record of the corporations which are actually in existence. In Opinions of Attorney General, 1912, Vol. 1, page 67, the Attorney General said, in part:

“A domestic corporation could not be effectually dissolved either by the court in a proceeding in dissolution or quo warranto, or by the voluntary action of the members of the corporation, after April 11, 1902, unless a certificate was filed with the secretary of state.”

In this opinion, however, the Attorney General did not consider the process by which a corporation ceases to exist through cancellation of its charter by the Secretary of State. In case of such cancellation there is no need for a certificate to be filed, because the action is already a matter of record in the office of the Secretary of State.

Furthermore, after the charter of a corporation has been cancelled under the provisions of section 5509 of the General Code, it is prohibited from exercising

any corporate functions or doing any corporate act. Therefore, after such cancellation it could not legally take the steps required by sections 8740 or 8741. The action of the stockholders' meeting and the filing of the certificate are both necessary to complete the act of dissolution, and since neither of these acts can be done by the corporation after cancellation of its charter, it would be immaterial whether the action of the stockholders was taken prior or subsequent to such cancellation.

It is our opinion, therefore, that if a corporation whose charter has been cancelled pursuant to the provisions of section 5509 desires to file a certificate with the Secretary of State showing voluntary dissolution, it must first be reinstated under the provisions of section 5511 of the General Code.

The view we have taken here of the status of a corporation whose charter has been cancelled by the Secretary of State is strengthened by the opinion of the Court of Common Pleas of Hamilton County in Cause No. 168890, *The National Automatic Typewriter Co. v. The Hooven Automatic Typewriter Corporation*. In this case the court holds that a corporation whose charter has been cancelled may not maintain an action in the courts of this state.

"(2) May a corporation be reinstated in this office, under any consideration, after two years from the date of cancellation has elapsed?"

Section 5511 of the General Code provides:

"Any corporation whose articles of incorporation or certificate of authority, to do business in this state, has been cancelled by the secretary of state, as provided in section one hundred and twenty of this act, upon the filing, within two years after such cancellation, with the secretary of state," etc. \* \* \*

If a corporation desires to avail itself of this provision of the General Code it must comply with the terms of this section in every particular. A corporation may not be reinstated after the expiration of the period of two years from the date of cancellation.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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559.

CORPORATION—ARTICLES MAY CLASSIFY NON-PAR STOCK AND VEST ENTIRE VOTING POWER IN ONE CLASS—SECTION 8728-1 G. C. CONSTRUED.

**SYLLABUS:**

1. *The articles of incorporation of a corporation having non-par stock may classify such stock and may vest the entire voting power in one class to the exclusion of the other.*

2. *A corporation in its articles may provide for both preferred stock and a non-par common stock and may vest the majority of the voting power, or all of the voting power, in the preferred stock.*