settlement could be changed from one county to another by residing only three months therein.

In connection with this question, it is also interesting to note section 3479 of the General Code which reads in part:

> "When a person has for a period of more than one year not secured a legal settlement in any county, township or city in the state, he shall be deemed to have a legal settlement in the county, township or city where he last has such settlement."

Without further consideration, it is my opinion that, where a person has a legal settlement in one county of this state, he may not acquire such a settlement in another county until he has resided and supported himself therein for the period of one year.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3946.

FEES—WHERE CORPORATIONS CONSOLIDATE OR MERGE, A FILING FEE, IN ADDITION TO A MINIMUM FEE, LEVIED UPON THE NUMBER OF SHARES IN EXCESS OF TOTAL NUMBER IN ORIGINAL CORPORATIONS.

SYLLABUS:

1. *Under Section* 176, *General Code, no filing fee in addition to the fixed fee of* $25.00, *is authorized when the consolidation agreement filed with the Secretary of State authorizes a lesser number of shares for the consolidated corporation than the total number of authorized shares of the constituent corporations even though such authorized shares of the new corporation are in excess of the authorized shares of either of the constituent corporations.*

2. *In computing the filing fees for merged or consolidated corporations the amount should be determined by applying the rates set forth in Paragraph* 2, *Section* 176, *General Code, to the authorized shares of the consolidated corporation and deducting therefrom the sum arrived at by applying like rates to the sum total of the authorized shares of the constituent corporations so consolidated. Such sum so arrived at is the filing fee in excess of the minimum filing fee of* $25.00.

3. *There is no distinction between merged corporations and consolidated corporations, in so far as the filing fees provided under Section* 176, *General Code, are concerned, whether such corporations continue to exist in the name of one of the constituent corporations or take an entirely new name.*

COLUMBUS, OHIO, January 13, 1932.

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

DEAR SIR:—Your recent request for opinion is as follows:

> "Directing your attention to Amended Senate Bill 21, passed by the last legislature and effective 10-14-1931, your opinion is requested as

to the method of computing a fee to be paid upon the filing of a certificate of consolidation by two or more domestic corporations.

Under the fee bill in effect prior to Oct. 14th, the filing fees to be paid on consolidations were dealt with separately by paragraph 3 of old section 176 of the Code. Under the present fee bill section 2 provides for a fee of twenty-five dollars for the filing of among other things a certificate of consolidation or merger plus an additional fee in case of any increase in the number of shares authorized to be issued effected by such certificate or agreement. General Code section 8623-68, in the second paragraph, distinguishes consolidations and mergers, and under an opinion of your office fees heretofore paid for the filing of a merger certificate were based upon the net increase in shares authorized to be issued by the corporation whose entity continued. In the case of a consolidation a new entity came into existence and fees were paid de novo as far as brackets in the fee bill were concerned.

Under the present fee bill my immediate inquiry is as to whether or not there is any fee in addition to a fee of twenty-five dollars where a consolidation agreement provides for a lesser number of shares than the total number of shares of the constituent corporations but a greater number of shares than may have been previously authorized by any one of the corporations so consolidating.

In event of your answer to the foregoing being in the affirmative, that is, that an additional fee is due and also in other cases where increase fees are called for by the filing of a certificate of consolidation, are the total number of shares of all the constituent corporations to be given credit for or a number of shares to be determined otherwise.

In passing, it is noted that the basis of fees paid for the filing of certificates of merger are now on practically the same basis as those for filing a certificate of consolidation. However, section 8623-68 of the general corporation act is to the effect that a certificate of merger is to be considered as an amendment to the articles of the corporation whose entity continues.

Having regard to this status of the certificate, are increase fees to be computed having regard only to the number of shares previously authorized for issuance by the corporation whose entity continues, or shall credit be given for the total number of shares of all of the constituent corporations going into the merger?"

The opinion to which you refer in your request was rendered July 25, 1929. See Opinions of the Attorney General for 1929, page 999. This opinion was rendered interpreting Section 176 of the General Code, as it then existed, however, as you are no doubt aware, the legislature at its last session twice amended this section to such an extent that said opinion can not be considered as interpreting said section in its present form. This section, as now amended and in so far as material to your inquiry, reads as follows:

"Except as otherwise provided by law, the secretary of state shall charge and collect, for the benefit of the state, the following fees, to-wit:

* * * *

2. For filing * * an agreement of consolidation or merger * * the sum of twenty-five dollars, and in case of any increase in the num-

> ber of shares authorized to be issued effected by such * * agreement the further sum of ten cents for each share authorized up to and including one thousand shares; five cents for each share authorized in excess of one thousand shares up to and including ten thousand shares; two cents for each share authorized in excess of ten thousand shares up to and including fifty thousand shares; * * one-quarter cent for each share authorized in excess of five hundred thousand shares; *less credit at said rates for the number of shares previously authorized to be issued by the corporation* or *by the domestic corporations a consolidation or merger of which is effected* by such * * * agreement. * *" (Italics the writer's.)

By virtue of these amendments the entire portion of Section 176, which provided fees for the filing of certificates of amendment, being paragraph 2 of such act, and for the filing and recording of a copy of agreement of consolidation being paragraph 3 thereof, have been repealed and superseded by Section 2 of the present Section 176.

An examination of the language above quoted shows that there is now no distinction between the filing fees in the case of a consolidation and a merger whether such new corporation retains the name of one of the constituent corporations or otherwise.

In the present Section 176, after setting forth the fee schedules the legislature uses the language, "less credit at said rates for the number of shares previously authorized to be issued by the corporation or by the domestic corporations a consolidation or merger of which is effected by such certificate or merger."

Section 8623-67, General Code, authorizes the consolidation of two or more domestic corporations. Such section in so far as pertinent, reads as follows:

> "Any two or more corporations organized under this act or any previous corporation act of this state may consolidate into a single corporation hereinafter called 'consolidated corporation.'"

Section 176 must be construed along with Section 8623-67, supra, and therefore the language "domestic corporations" as used in such section refers to the same corporations referred to in Section 8623-67, above quoted, and the fees provided for in Paragraph 2, of such section are for the filing of the certificate required or authorized to be filed by Paragraph (b) of Section 8623-67. Therefore, in determining the fees due in excess of the minimum filing fee of $25.00 this amount should be computed by applying the rates set forth in Paragraph 2, to the authorized capital stock of the consolidated corporation as set forth in the consolidation agreement so filed with the Secretary of State and from such sum deduct the sum arrived at by applying the same schedule of rates to the combined authorized shares of the merging companies, or, in other words, if a corporation having 250 authorized shares consolidates or merges with another corporation having 750 authorized shares, and forms a corporation referred to in the statutes as a consolidated corporation having 900 authorized shares, the determination of the fees in addition to the minimum $25.00 fee would be as follows: 10c per share on 900 shares would be $90.00, and subtracting therefrom 10c per share on 1,000 shares or $100.00, would evidently leave a minus quantity, and therefore no fees could be collected in excess of the minimum fee as specified in such section. I am therefore of the opinion that:

1. Under Section 176, General Code, no filing fee in addition to the fixed fee of $25.00 is authorized when the consolidation agreement filed with the Sec-

retary of State authorizes a lesser number of shares for the consolidated corporation than the total number of authorized shares of the constituent corporations even though such authorized shares of the new corporation are in excess of the authorized shares of either of the constituent corporations.

2. In computing the filing fees for merged or consolidated corporations the amount should be determined by applying the rates set forth in Paragraph 2, of Section 176, General Code, to the authorized shares of the consolidated corporation and deducting therefrom the sum arrived at by applying like rates to the sum total of the authorized shares of the constituent corporations so consolidated. Such sum so arrived at is the filing fee in excess of the minimum filing fee of $25.00.

3. There is no distinction between merged corporations and consolidated corporations, in so far as the filing fees provided under Section 176, General Code, are concerned, whether such corporations continue to exist in the name of one of the constituent corporations or take an entirely new name.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3947.

COST OF RECOUNT—MINIMUM CHARGE $5.00 A PRECINCT, MAXIMUM $10.00 A PRECINCT.

SYLLABUS:

1. *The actual cost of a recount, pursuant to Section 4785-162, General Code, must be disregarded when such cost is less than $5.00, per precinct, such minimum cost being fixed by statute at $5.00 per precinct.*

2. *When the result of the election is not changed by the recount, the amount to be refunded to a candidate requiring such recount is determined by returning the entire deposit for any precinct in which an error of two percent of the total vote cast concerning an issue or office is found; but in all other precincts in which the error does not amount to two percent of the total of such recount and does not change the result of the election even though the cost is less than $5.00 per precinct, there should be deducted from the deposit the sum of $5.00 for each precinct in which a recount is required and the remainder of such excess deposit returned to the candidate.*

COLUMBUS, OHIO, January 13, 1932.

HON. JOHN I. MILLER, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—Your request for opinion is as follows:

> "Section 4785-162 reads as follows:
>
> 'Any candidate voted for at a primary or other election, or any group of five or more qualified electors voting at such election, by making an application in writing to the board of elections, shall be entitled to have the votes for any such candidate, or other candidate for the same office,