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.

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.*

COLUMBUS, OHIO, July 6, 1923.

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

DEAR SIR:—Receipt is acknowledged of your letter of recent date in which you submit three questions, which are answered in their order:

(1) "May a non-par stock corporation provide for a classification of its non-par common stock in a way as to wholly deprive one of such classes of voting power, in favor of any other class of common stock?"

Section 8728-1 of the General Code which authorizes the issuance of non-par stock reads in part as follows:

"Each share of such common stock without nominal or par value shall be equal to every other share of stock, except that the articles of incorporation may provide that such stock shall be divided into different classes with such designations and voting powers or restrictions or qualifications thereof as shall be stated therein." * * *

This language is almost identical with that of section 8669 with reference to corporations with par value common stock. "A corporation issuing both common and preferred stock may create designations, preferences and voting powers or qualifications thereof in the certificate of incorporation if so desired." The courts have uniformly held that a corporation whose common stock has a stated par value may by its articles of incorporation restrict the voting power to the common stock or to the preferred stock to the exclusion of the other class. These decisions are based upon the broad general principle that the stockholders of the corporation enter into a contract of which the articles of incorporation are a part, and that they may therefore contract with each other concerning voting powers of the stock as they choose.

In the case of Krell v. Krell Piano Co., 23 N. P. (N. S.), 123, the court says:

"Any restriction or deprivation of voting power is a matter of contract between the stockholders, binding upon them, and in which the public has no concern."

In the case of Miller, Executor v. Ratterman, 47 O. S., 141, the court says:

"The ownership of stock in an incorporated company, as a general rule, carries with it the right to vote upon the same at any meeting of the holders of capital stock. But to this rule there may be exceptions; and it is competent for a railroad company, in issuing certificates of preferred stock, to stipulate therein that the holders shall not have or exercise the right to to vote the same, or as owners of the same, at any meeting of the holders of the capital stock of the company. * * * In any view, it is fair to treat the proviso as but an arrangement between two classes of stockholders which does not concern the public. It is true that one characteristic of stock generally is that it can be voted upon, but this is not essential; indeed instances may arise where it is good policy to prohibit the voting upon stock."

Thompson on Corporations, Article 3605, says:

> "The whole matter is one of contract or of statutory regulation, and it would not be improper where there is no statutory or charter prohibition, to confer the sole right to vote upon the preferred stockholders, to the exclusion of the holders of common stock."

In the case of State of Missouri, etc., v. Swanger, 190 Mo., 561, the court holds that a corporation may restrict the right of stockholders to vote by the provisions of its charter, even though the constitution of the state of Missouri in section 6, Article XII, provides:

> "In all elections for directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company,"

and though the Revised Statutes of that state contain practically the same provision. The court further says:

> "We hold, then, that the evident purpose of Sec. 6, Art. 12, of our Constitution was the guaranty to stockholders having the right to vote of cumulating their votes, and has no reference to the contractual right of the stockholders *inter sese* of providing that preferred stockholders shall or shall not have the right to vote such stock; and to hold that it has taken away this well-recognized common-law right would be to distort its obvious purpose."

It is the opinion of this department, therefore, that a non-par stock corporation may by its charter deprive one class of its common stock of the right to vote, subject to the specific provisions of section 8698 of the General Code, which reads in part:

> "For the purposes of this section restrictions or limitations on the voting power of any of the authorized capital stock shall not apply."

> (2) "Kindly advise us as to whether a non-par stock corporation may provide for both a preferred and non-par common stock with the voting power of such corporation vested in the preferred stock and denied to the common stock?"

The reasoning of this opinion in answer to your first question leads to the conclusion that a non-par stock corporation may vest the voting power of the corporation in the preferred stock, to the exclusion of the common stock, subject to the limitation of section 8698 G. C.

> (3) "May a non-par stock corporation provide that its preferred stock shall carry a majority of the voting power of such corporation?"

The same reasoning applies to this question as to the previous questions. The conclusion is that a non-par stock corporation may in its by-laws vest a majority of the voting power of such corporation in the preferred stock.

Respectfully,
C. C. CRABBE,
Attorney General.