

3717.

APPROVAL, BONDS OF AVON VILLAGE SCHOOL DISTRICT, LORAIN COUNTY, \$5,000, IMPROVEMENT OF SCHOOL PROPERTY.

COLUMBUS, OHIO, November 14, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3718.

ARTICLES OF INCORPORATION—AN AMENDMENT CONTAINING PROVISIONS RESPECTING PREFERRED STOCK AS SET FORTH IN THIS OPINION MAY BE ACCEPTED AND FILED BY SECRETARY OF STATE.

An amendment to the articles of incorporation of a domestic corporation subject to the general corporation laws, containing provisions respecting preferred stock substantially in the form set forth in the opinion, may be accepted and filed by the Secretary of State. Sections 8668 and 8669 G. C. considered.

COLUMBUS, OHIO, November 14, 1922.

Hon. Harvey C. Smith, Secretary of State, Columbus, Ohio.

DEAR SIR:—Your letter of recent date inquiring whether or not your department should accept a certificate of amendment to the articles of incorporation of an Ohio corporation containing, among other preferred stock clauses, provisions such as these hereinafter referred to, was duly received.

The facts as I understand them, are as follows:

The A. B. Company, a corporation under the laws of Ohio, intends to take steps to amend its charter so as to provide for an authorization of new preferred stock. It is proposed to apply to stockholders for authority to make the authorization greater than the amount intended to be immediately issued. In order that the dividend rate and redemption price may be adaptable to the financial market conditions at the dates of the later issues within the authorization, it is proposed to insert in the preferred stock clauses of charter amendment, substantially the following provisions applying to dividend rates and redemption price:

“All the preferred stock herein authorized as and when issued is of equal priority and validity, and on a parity, except as to rate of dividend and redemption price, and possesses the following rights, powers and privileges, and is subject to the limitations and restrictions as follows:

Dividends

The holders of the preferred stock of the company shall be entitled to

receive dividends out of the surplus profits of the company at the per centum per annum, and no more, which shall be fixed by the directors at the time of issue of any part of said preferred stock. The rate so fixed shall apply to such partial issue only and may be changed by the directors with reference to subsequent partial issues at the time of each issuance thereof. The dividend rate so fixed shall not be less than five per cent nor more than eight per cent per annum.

Redemption

The preferred stock shall be subject to redemption in whole or in part, at the option of the board of directors, by giving sixty days' notice prior to any regular dividend payment date, in a newspaper published in Cincinnati, Ohio, and in New York, N. Y. (publication to be made weekly), and by notice in writing to said preferred stockholders of record, upon payment of all accrued and unpaid dividends, and an amount for each share as shall have been fixed by the Board of Directors at the time of issue of each part of said preferred stock. The amount so fixed shall apply to such partial issue only, and may be changed by the directors with reference to subsequent partial issues, at the time of issuance thereof."

Under the general corporation laws of this state it is expressly provided that corporations having both common and preferred stock may provide in their articles of incorporation that the holders of the preferred stock shall be entitled to yearly dividends "of not more than eight per cent," and also that such corporation may create designations, preferences and voting powers, or restrictions or qualifications thereof, etc. It is also further provided that if desired, preferred stock may be made subject to redemption at not less than par at a fixed time and price to be expressed in stock certificates thereof.

The particular sections of the general corporation law referred to, and in so far as they apply to the present situation, are sections 8668 and 8669 of the General Code, and the pertinent parts thereof read as follows:

"Sec. 8668. When the capital stock is to be both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to yearly dividends of not more than eight per cent, payable quarterly, half yearly or yearly out of the surplus profits of the company each year in preference to all other stockholders. Such dividends also may be made cumulative."

"Sec. 8669. A corporation issuing both common and preferred stock may create designations, preferences, and voting powers, or restrictions or qualifications thereof, in the certificate of incorporation, and if desired, preferred stock may be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock certificates thereof. * * *"

It will be observed that the statement of facts above set forth clearly state that the dividend rate on the preferred stock shall not be more than eight per cent per annum, and we believe that that provision, as well as the other provisions which will govern the issue and redemption of the preferred stock come within, and are fairly warranted by the statutory law of this state above quoted.

Of course, the corporation will understand that when it comes to the issuing of the preferred stock, the certificates thereof should expressly state the redemption price, which must not be less than par, and also that the time of redemption must also be fixed and stated in the certificates.

You are therefore advised that your department would be warranted in accepting and filing the certificate of amendment referred to.

Respectfully,
JOHN G. PRICE,
Attorney-General.

3719.

DISAPPROVAL, BONDS OF VILLAGE OF JENERA, HANCOCK COUNTY, \$4,000, FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, November 14, 1922.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

Re: Bonds of Village of Jenera, Hancock County, \$4,000, for the improvement of Sandusky Street in said village from the East line of Main Street to the East line of lots 99 and 102.

GENTLEMEN:—An examination of the transcript submitted with respect to the above issue of bonds discloses that said issue is apparently one in anticipation of the collection of assessments for the improvement of the street above indicated.

The objections noted by me in an examination of the transcript are so many and various that I will not attempt any discussion of the same other than to note the objections as they occurred to me in examination of said transcript.

1. The transcript does not contain any statement of the names of the councilmen and other officers of the village who may have had anything to do with the proceedings relating to said improvement and to said bond issue.

2. The transcript should have contained a certificate of the plans, specifications, etc. with respect to this improvement, which were on file before the resolution of necessity was passed.

3. The minutes of the meeting of council at which the resolution of necessity was passed should have been set out in the transcript. This should include a statement as to the character of the meeting at which said resolution was passed, a statement of the members present, whether said resolution was passed on a suspension of the rules, and if so, the aye and nay vote on the motion to suspend.

4. The resolution of necessity set out in the transcript does not fully comply with the statutory provisions in that the same does not provide for a mode of payment, that is, the number of annual installments in which the assessments are to be paid.

5. It does not appear that the resolution of necessity was published as provided by statute.

6. The transcript fails to show that no petition for a referendum on said resolution was filed within the time provided by law.