

HOUSE No. 1443.

Commonwealth of Massachusetts.

OFFICE OF THE ATTORNEY-GENERAL, BOSTON, June 28, 1900.

HON. JAMES J. MYERS, *Speaker of the House of Representatives.*

DEAR SIR :— I have the honor to acknowledge the receipt of a copy of the order adopted by the honorable House of Representatives, June 25, as follows, to wit :—

“ *Ordered*, That the Attorney-General be and hereby is requested to furnish the House of Representatives with an opinion as to who, if anybody, will have the right to issue the balance of five millions of the ten millions of stock authorized by chapter one hundred and sixty-three of the acts of the year eighteen hundred and eighty-nine, being ‘ An Act to authorize the Boston and Albany Railroad Company to increase its capital stock,’ if the Boston and Albany Railroad is leased to the New York Central and Hudson River Railroad Company ; and if it may be issued he will give an opinion as to the conditions, regulations or terms under which such an issue may be made.”

The balance of stock authorized by the act referred to is to be issued as specified in the act : “ for the improvement of the alignment of its road, for the construction of additional tracks, for the purchase of land, for the separation of level crossings of highways and town ways, for the construction of new stations, and for the acquirement of private ways.”

Under the lease, however, all these matters are specially provided for. All permanent improvements, the purchase

of land, and other like matters, are to be paid for by the issuance of bonds of the lessor corporation, the interest on which bonds is to be paid by the lessee; and there is no authority in the lease for the issuing of shares by the lessor corporation. The lessor corporation, therefore, has no further occasion to issue shares under this act, and in my opinion its authority so to do is superseded by the provisions of the lease into which, by the assent of the Commonwealth, it has entered.

It is clear that the lessee corporation has no authority under the lease to issue stock of the lessor corporation. Although the lease purports to assign the "franchises" of the lessor, this cannot in my judgment be taken to include the franchise to issue additional stock. Such a franchise is inherently one belonging to the corporation alone, and which it cannot assign without destroying its corporate integrity.

I am of opinion, therefore, that there is no authority in any person or corporation to issue the balance of stock authorized by Sts. 1889, c. 163, so long as the lease may remain in force.

Yours very truly,

HOSEA M. KNOWLTON,
Attorney-General.