

1723.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE OHIO NATIONAL FIRE INSURANCE COMPANY, COLUMBUS, OHIO.

COLUMBUS, OHIO, December 21, 1920.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—The proposed articles of incorporation of The Ohio National Fire Insurance Company, Columbus, Ohio, are herewith returned to you unapproved with the suggestion that they be returned to the incorporators for re-drafting in accordance with section 9607-2 G. C. (107 O. L. 647), and my former opinion No. 539 addressed to you under date of August 4, 1919, see 1919 Opinions of Attorney-General, Vol. 1, page 925.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1724.

APPROVAL, BONDS OF MADISON COUNTY, OHIO, IN AMOUNT OF \$119,900 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, December 22, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1725.

BANKS AND BANKING—CONSOLIDATION—WHERE BANKS ARE LOCATED IN TWO CITIES IN SAME COUNTY, BOUNDARY LINES OF WHICH DO NOT TOUCH AND WHERE BANKS LOCATED IN SAME CITY, PASSED UPON.

1. *Where two banks, located in two cities or villages in the same county, the boundary lines of which do not touch, consolidate, or one transfers its assets and liabilities to the other, general banking business can not be conducted at both the original locations of such banks.*

2. *But if such banks are located in the same city, village or township, or one is located in a city or village contiguous to the township, city or village in which the other is located; and if the superintendent of banks upon an examination of the certified copies of the proceedings of the boards of directors and stockholders and the copy of the complete agreement between the banks referred to in said section, consents to such consolidation or transfer, no special consent to establish a branch bank is required. But while no opinion is expressed as to whether the institutions maintained at different places of business are branches or not, it is sug-*

gested that a showing be made to the superintendent that such places of business will not be in non-contiguous territory and the number that will be maintained.

COLUMBUS, OHIO, December 22, 1920.

HON. IRA R. PONTIUS, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—You advise in your recent communication that two banks located in two cities, which do not touch but are in the same county, desire to consolidate under section 710-86 G. C. and thereafter maintain each bank at its present location, but under the name of a consolidated bank. Upon this state of facts you request my opinion as to whether that part of section 710-73 G. C. which relates to branch banks applies in the case of consolidation under section 710-86 G. C.; and further if the consent of the superintendent of banks be given to such transfer under 710-86, is it also necessary that application be made to him for permission to establish a branch bank under section 710-73?

This department, in Opinion No. 1642, rendered to you under date of November 8, 1920, held that a state bank may establish branches in those cities and villages only which touch or abut upon the place designated in its articles of incorporation for the transaction of its business. That opinion construed section 710-73 G. C., which is in part as follows:

“No branch bank shall be established until the consent and the approval of the superintendent of banks has first been obtained, and no bank shall establish a branch bank in any place other than that designated in its articles of incorporation, except in a city or village contiguous thereto.”

Section 710-86 G. C. contains the following language:

“A bank may consolidate with or transfer its assets and liabilities to another bank. Before such consolidation or transfer shall become effective, each bank concerned in such consolidation or transfer, shall file, or cause to be filed, with the superintendent of banks, certified copies of all proceedings had by its directors and stockholders which such stockholders' proceedings shall set forth that holders of at least two-thirds of the stock, voted in the affirmative on the proposition of consolidation or transfer. Such stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between said banks, with reference to such consolidation or transfer. Upon the filing of such stockholders' and directors' proceedings as aforesaid the superintendent of banks shall cause to be made an examination of each bank to determine whether the interests of the depositors and creditors and stockholders of each bank are protected and that such consolidation or transfer is made for legitimate purposes, and his consent to or rejection of such consolidation or transfer shall be based upon such examination. No such consolidation or transfer shall be made without the consent of the superintendent of banks. If such consent is refused, an appeal may be taken therefrom in the same manner as is provided in section 45 of this act. The expense of such examination shall be paid by such banks. Notice of such consolidation or transfer, shall be published for four weeks, before or after the same is to become effective, at the discretion of the superintendent of banks, in a newspaper published in a city, village or county, in which each of such banks is located, and a certified copy thereof shall be filed with the superintendent of banks.”

Section 710-87 G. C. declares that in case of either transfer or consolidation of

banks the rights of creditors shall be preserved unimpaired and the respective companies deemed to be in existence to preserve such rights.

Section 710-88 G. C. provides:

"In case of consolidation, when the agreement of consolidation is made and a duly certified copy thereof is filed in the office of the secretary of state, together with a certified copy of the approval of the superintendent of banks to such consolidation, the banks, parties thereto, shall be held to be one company possessed of the rights, privileges, powers and franchises of the several companies, but subject to all the provisions of law relating to the different departments of its business. The directors and other officers named in the agreement of consolidation shall serve until the first annual election, the date for which shall be named in the agreement. On filing such agreement all and singular the property and rights of every kind of the several companies shall thereby be transferred to and vested in such new company, and be as fully its property as they were of the companies parties to such agreement."

It is now well settled that corporations have the right and the power to consolidate only by the consent and authority of the legislature, which must be clearly and distinctly expressed.

See citation of authorities in note to *Wood vs. Seattle*, 52 L. R. A., 370.

Section 710-86 G. C. speaks of a consolidation or transfer of assets. The latter transaction is what the authorities term a merger.

In the case of a consolidation a new corporation is created; in the case of a merger one already existing absorbs the other.

Atlantic & Gulf R. R. C. vs. Georgia, 98 U. S., 359.

If one bank sells out to another, that is, transfers its assets to the latter, business could be carried on at the former location of the vendor bank only under the provisions of section 710-73 G. C. Clearly one establishment would be a branch of the other. But if the transaction is a consolidation your question becomes more difficult.

The common law definition of "consolidation"—the creation of a new corporation—seems to have been adopted by section 710-88 G. C., for it is there declared that the banks, parties to the agreement, shall be held to be one company. Section 710-87 G. C. does not militate against this view for its purpose is apparently only to preserve the rights of creditors.

If we have a consolidation as the authorities define it and section 710-88 G. C. contemplates it, may the new entity maintain both the old places of business in cities in the same county which do not touch? My opinion is that it may not. True, section 710-88 G. C. declares that there shall be one company possessed of the rights, powers, privileges and franchises of the several companies. I think these terms contemplate the exercise of corporate functions, rather than the place where they may be exercised. I do not think it could be said, because one bank had had a right to do business in one city, and the other in another several miles distant in the same county, that the new institution could for that reason maintain both places of business. There are a number of provisions in the banking act as codified in sections 710-1 et seq. which indicate that the legislature did not contemplate that banks should do business in different localities at the same time unless express authority was given.

Grants of corporate rights, privileges, powers and franchises are taken subject to existing laws.

Chesapeake & Ohio Ry. Co. vs. Miller, 114 U. S., 176.

In section 710-31 G. C., which requires reports of the bank's condition, the superintendent is directed to publish such report in a newspaper "in the place where such bank is established, or if there is no newspaper in the place, then in one published nearest thereto in the same county, at the expense of such bank."

The articles of incorporation of a bank to be organized must designate the particular city, village or township in which its business is to be transacted. G. C. section 710-40.

The certificate of compliance with the provisions of law required by section 710-56 G. C. is to be published in some newspaper printed in the city, village or county where the bank is located.

The minutes of the meetings of the board of directors and of the executive committee must be kept on file in the bank. Section 710-63 G. C. Its books and records must also be kept there. Section 710-73 G. C. Now if a corporation has two places of business and neither is deemed a branch, where are these records to be kept? An unincorporated bank must in its statement give the name of the county and city or village in which it is located and the business carried on. Section 710-77 G. C.

Where a bank goes into liquidation, notice must be published in the place in which the bank is located. Section 710-85 G. C.

A certified copy of the certificate of appointment of a liquidating agent is to be filed in the office of the clerk of the county in which the bank's office is located. Section 710-94 G. C.

The common pleas court of that county is given jurisdiction to make orders in the settlement of such bank's affairs and if there is real estate situated outside the county in which the office of the bank is located, certified copies of orders must be filed in the counties where such property is situated. Section 710-95 G. C.

In my opinion the general policy of the banking act, to localize a bank's business, ought not to be overlooked or a doubt resolved against it. As said in *Bruner vs. Citizens Bank*, 120 S. W. at page 348:

"* * * It is important that a bank should only have one place of business. The management and safe investment of money requires constant and painstaking care and attention, as well as sound and discriminating judgment on the part of the officers of a bank. These officers, or the majority of them, usually live convenient to the place where the bank is located; and, although in many small institutions the routine of affairs is under the immediate control and direction of the cashier, the president and some of the directors are daily in and about the place of business, keeping a watchful eye on its conduct. But, if branches were established, they must in the necessity of things be left almost exclusively to the persons immediately in charge, free from the influence and presence of the officers and directors, and this practice would not in our judgment be conducive to safe and conservative banking methods."

If the conclusion reached in Opinion 1642, that a state bank may not establish any branch in a city or village which does not touch the place designated in its articles of incorporation, is correct, it would seem to be true also that a bank formed upon consolidation could not maintain offices for the doing of a general banking business in non-contiguous cities or villages. The reason for the objection in the latter case would be as apparent as in the former.

It is therefore my opinion that the procedure which the two banks referred to in your letter contemplate is not warranted by law.

You submit the further question as to whether section 710-73 G. C., pertaining to branch banks, applies to a case of consolidation under section 710-86 G. C., and

whether or not in such case application must be made to the superintendent of banks to establish a branch.

I do not find it necessary in this opinion to determine whether or not the places of business which a consolidated institution might maintain in the same city are branches within the meaning of section 710-73 G. C., or whether either is a branch. As this is a question which might become very important in commercial controversies arising over the power or out of the dealings of these institutions or the liability of one for the acts of another, I do not think it advisable to attempt to answer it here. So far as your administrative acts are concerned, I believe and suggest that if from the proceedings required of stockholders and directors by the provisions of section 710-86 G. C. it appears that the consolidated institution intends to maintain offices for general banking business in one or in contiguous localities as defined in Opinion 1642, nothing further need be required. It seems to me that your approval of such proceedings would be a sufficient compliance with the provisions of section 710-73 G. C. even if it should turn out that such institutions are branches. But without passing on the question as to whether they are or not, I suggest that you require a showing that separate places of business in non-contiguous territory as I have defined it are not contemplated and the number to be maintained. A plan which contemplates the maintenance of such offices in non-contiguous localities should, of course, be disapproved.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1726.

SCHOOLS—WHERE BOARD OF HEALTH OF GENERAL HEALTH DISTRICT ORDERS DESTRUCTION OF SCHOOL BOOKS TO PREVENT SPREAD OF CONTAGIOUS DISEASE—BOARD MAY RESTORE BOOKS OR COMPENSATE OWNERS.

Where a board of health of a general health district in the interest of the public welfare orders the destruction of school books for the purpose of preventing the spread of a contagious disease, it may properly restore said books or compensate the owners for the value thereof in the manner outlined in sections 4434 and 4435 of the General Code.

COLUMBUS, OHIO, December 22, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—In a communication of recent date from Mr. W. B. Bliss, assistant superintendent of public instruction, my opinion is requested upon the following statement of facts:

“An epidemic of scarlet fever prevails in a school district and the school is closed by order of the health commissioner. In the interest of suppressing and preventing the possible spread of the contagion some of the school books belonging to the pupils were destroyed. Who replaces the books destroyed?”

Your question necessitates consideration of sections 4434 and 4435 of the General Code, which were a part of the municipal health code and were not amended