

Carl A. Smith, Resident Division Deputy Director in Division No. 1—
Glens Falls Indemnity Company, Glens Falls, New York.
George Martin Lieber, Resident District Deputy Director in Sandusky
County—Fidelity and Deposit Company of Maryland.
R. E. Levering, Resident District Deputy Director in Knox County—Hartford
Accident and Indemnity Company.
John S. Dennis, Resident District Deputy Director in Muskingum and Guernsey
Counties—Globe Indemnity Company.

The first of the above mentioned bonds is evidently executed pursuant to the provisions of Sections 1182 and 1182-3, General Code. Section 1182, General Code, reads, so far as pertinent here:

“Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director. * * ”

Section 1182-3, General Code, states so far as pertinent:

“All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds, * * shall be approved as to sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general and be deposited with the secretary of state. * * ” (Words in parenthesis, the writer’s.)

Finding said bond to be in proper form, according to the above noted statutory provisions, it is hereby approved.

The last three above mentioned bonds are evidently executed pursuant to the provisions of Sections 1183 and 1182-3, General Code. Section 1183, General Code, provides:

“ * * Such resident district deputy directors shall * * give bond in the sum of five thousand dollars * * ”

Section 1182-3, General Code, in so far as pertinent, has been quoted above.

The third and fourth of the above listed bonds having been properly corrected according to the errors pointed out in Opinion No. 4112, (April 3, 1935), same are now in proper form as is the second of the above listed bonds, and same are hereby approved. All bonds are being returned herewith.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4143.

CORPORATION—OPERATIVE TRADE ASSOCIATION SHOULD BE INCORPORATED AS CORPORATIONS NOT FOR PROFIT.

SYLLABUS:

Cooperative trade associations organized pursuant to sections 10185 and 10186, General Code, should be incorporated as corporations not for profit.

COLUMBUS, OHIO, APRIL 13, 1935.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your request for an opinion as to whether or not cooperative trade associations organized pursuant to sections 10185 and 10186 of the General Code may incorporate as corporations for profit or corporations not for profit. In your communication you quote the following portion of the opinion of my predecessor appearing in Opinions of the Attorney General for 1930, Volume II, at page 885:

“Provision was made for the incorporation of associations known as cooperative trade associations as early as 1867. Provisions for these associations are contained in Sections 10185 and 10186, General Code. Section 10186 provides that profits arising from the business may be divided among the stockholders from time to time in proportion to their purchases. Obviously these associations are in the true sense corporations for profit.”

Sections 10185 and 10186, General Code, read as follows:

Section 10185. “An association incorporated for the purpose of purchasing, in quantity, grain, goods, groceries, fruits, vegetables, provisions, or any other articles of merchandise, and distributing them to consumers at the actual cost and expense of purchasing, holding, and distribution, may employ its capital and means in the purchase of such articles of merchandise as it deems best for itself, and in the purchase or lease of such real and personal estate, subject always to the control of the stockholders, as are necessary or convenient for purposes connected with and pertaining to its business.”

Section 10186. “Such association may adopt such plan of distribution of its purchases among the stockholders and others as is most convenient, and the best adapted to secure the ends proposed by the organization. Profits arising from the business may be divided among the stockholders from time to time, as it deems expedient, in proportion to the several amounts of their respective purchases.”

Ordinarily corporations for profit are those which are formed for the purpose of permitting business enterprises with a view to realizing gains to be distributed as dividends to the shareholders in proportion to their contributions to the capital stock. *Snyder, et al., vs. Chamber of Commerce, et al.*, 53 O. S. 1.

On the other hand, corporations not for profit are organized for purposes other than the pecuniary profit to their members. 10 O. Jur. 1118.

Section 8623-102, General Code, which is part of the general corporation act, prohibits a corporation not for profit from issuing certificates for shares to evidence interest in its property or otherwise.

Section 8623-97, General Code, reads as follows:

“A corporation not for profit may be formed hereunder for any purpose or purposes not involving pecuniary gain or profit for which natural persons may lawfully associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporation not for profit, such corporations shall be formed under such provisions and not hereunder.”

Section 8623-132, General Code, reads in part as follows:

“When special provision is made in the General Code for the incorporation, organization, conduct or government of corporations formed for any specified purpose, this act shall not apply, but the special provision shall govern unless it clearly appears that the special provision is cumulative.

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In view of these last two statutes, section 8623-102, General Code, applies only to corporations not for profit organized under the general corporation act. Sections 10185 and 10186 assume that capital stock shall be issued but ordinarily the existence of capital stock does not conclusively indicate that a corporation is one for profit. *Snyder, et al., vs. Chamber of Commerce, et al., supra.* Of course, corporations not for profit now organized under the general corporation act cannot issue shares of stock. Section 10185 applies only to associations incorporated for the purpose of purchasing goods and merchandise and distributing the same at the actual cost and expense of purchasing, holding and distribution. This negatives any idea of profit. It is true that section 10186 refers to profits arising from business, but in view of the above provision of section 10185, this can only mean such profits as may arise by overcharging the consumers in sales to them, it being practically impossible definitely to determine in advance the exact cost of producing, holding and distributing. It is to be noted that section 10186 also provides that such profits are to be divided among the stockholders in proportion to the several amounts of their respective purchases and not according to their stock holdings as is the case of corporations for profit. No profits are to be distributed as dividends on shares of capital stock. In Opinions of the Attorney General for 1929, Volume I, page 433, the opinion after referring to sections 10185 and 10186 says:

“Clearly, the purpose clause submitted contemplates the exercise of no powers in excess of those set forth in this section, and I am therefore of the opinion that such articles may be filed as a corporation not for profit as therein provided.”

In neither this opinion nor in the 1930 opinion referred to in your letter was the question raised as to whether or not such a corporation is one for profit. This question was squarely raised in Opinions of the Attorney General for 1919, Volume I, page 213, and it was there held as follows:

“A corporate trade association cannot be incorporated for profit under sections 10185 and 10186 G. C.”

The opinion says:

“The statutes referred to do not authorize the incorporation of such associations for profit. Under section 10185 G. C. the distribution of the association's authorized purchases must be made ‘at the actual cost and expense of purchasing, holding and distribution.’ While it is true that section 10186 G. C. provides that ‘profits arising from the business’ may be divided among the stockholders in proportion to the several amounts of their respective purchases, the ‘profits’ referred to are, in my opinion, such as may arise incidentally from sales, on account of the impracticability if not the impossibility of determining in advance the exact cost and expense of purchasing, holding and distribution, or such also as may arise from the sale of surplus stock remain-

ing after the wants of stockholders and customers, who are embraced in the association's plan of distribution, have been supplied. A contrary interpretation of section 10186 G. C. would render ineffectual the provisions of section 10185 G. C., which contemplates distribution to consumers at actual cost, etc."

I agree with the reasoning of this opinion.

I am therefore of the opinion that cooperative trade associations organized pursuant to sections 10185 and 10186, General Code, should be incorporated as corporations not for profit.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4144.

APPROVAL, BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$15,000.

COLUMBUS, OHIO, APRIL 13, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4145.

APPROVAL, BONDS OF DEERFIELD TOWNSHIP RURAL SCHOOL DISTRICT,
ROSS COUNTY, OHIO, \$30,100.00.

COLUMBUS, OHIO, APRIL 13, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4146.

APPROVAL, PAPERS IN CONNECTION WITH THE CONVERSION OF THE
MERCHANTS AND MECHANICS SAVINGS AND LOAN ASSOCIATION
OF SPRINGFIELD, OHIO, INTO MERCHANTS AND MECHANICS FEDERAL
SAVINGS AND LOAN ASSOCIATION OF SPRINGFIELD, OHIO.

COLUMBUS, OHIO APRIL 15, 1935.

HON. W. PAUL WAGNER, *Superintendent of Building and Loan Associations of Ohio,
Columbus, Ohio.*

DEAR SIR:—I have examined the various papers submitted by you in connection with the conversion of The Merchants and Mechanics Savings and Loan Association of