

Section 710-52, General Code, provides:

“Such corporation shall be created, organized, governed and conducted, and directors shall be chosen in all respects in the same manner as provided by law for corporations organized under the general incorporation laws of this state, in so far as the same shall not be inconsistent with the provisions of this act.”

Section 8623-14, General Code, authorizes a corporation, organized under authority of the general corporation act, to “change the place in this state where the principal office is to be located” by amendment to its Articles of Incorporation. The general corporation act defines “Articles of Incorporation” as including amendments thereto. There is nothing inconsistent with the provisions of the Banking Code of Ohio in the provisions of Sections 8623-2 and 8623-14, General Code. Opinions of the Attorney General for 1931, No. 3335. An amendment to the Articles of Incorporation of a bank must comply with all the provisions of the banking act applicable to original Articles in so far as the same are pertinent. Opinions of the Attorney General for 1931, No. 3335, *supra*. I refer specifically to sections 710-41, 710-42, 710-43, 710-44 and 710-46, General Code, *supra*.

In direct answer to your inquiry, I am of the opinion that a bank, by amendment of its Articles of Incorporation, approved by the Superintendent of Banks, may change the place where its business is to be transacted from one city, village or township in the State of Ohio to another city, village or township in the State of Ohio.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4079.

AGRICULTURAL SEEDS—LICENSE FOR SALE OF SUCH—DUTY OF  
DIRECTOR OF AGRICULTURE TO ISSUE LICENSE FOR SALE—NO  
POWER TO REVOKE LICENSE FOR VIOLATION OF SEED LAW.

*SYLLABUS:*

1. *All persons except those exempted by section 5805-6, General Code, must obtain a license for each place of business in which agricultural seeds are offered or exposed for sale, solicited for sale or sold as is required by the provisions of section 5805-13, General Code, regardless of the quantity of agricultural seeds offered for sale or sold.*

2. *A salesman soliciting orders for agricultural seeds is not required to comply with the licensing provision of section 5805-13, General Code, when such orders are not solicited in any place where seeds are offered or exposed for sale, solicited for sale or sold.*

3. *The tags required to be affixed on packages or containers of agricultural seeds or mixtures must be placed thereon before leaving the premises of the vendor of agricultural seeds or mixtures.*

4. *The director of agriculture has no power, express or implied, to revoke a license issued by virtue of section 5805-13, General Code; nor does the director of agriculture have the power or authority, express or implied, to refuse to issue a*

*license for the sale of agricultural seeds to one who has violated the provisions of the seed law of this state.*

COLUMBUS, OHIO, February 20, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads in part as follows:

“Several inquiries have been directed to the Department of Agriculture concerning the Seed Law embracing Sections 5805-1 to 5805-15 and before replying we desire a written interpretation of the following questions:

1. Are vendors of any quantity of agricultural seed required to have a seed license?
2. Is a salesman taking orders but not stocking seed required to obtain a seed license?
3. Must tags be affixed to each separate package before leaving the vendors premises?
4. Under the police power of the director does he have authority to revoke license for proper cause—to wit: Continuous violation of the provisions of the Agricultural Seed Law?
5. In case the director cannot revoke a license for infraction of the Seed Law may he be compelled to issue a new license at the expiration of the old one?”

The following sections and parts of sections of the General Code are pertinent to the first three questions in your letter.

Section 5805-2 reads in part as follows:

“Every lot of agricultural seeds, as defined in section one of this act, except as herein otherwise provided, when in quantities of ten pounds or more, except in case of rape when one pound or more shall be the quantity requiring a label, shall have affixed thereto in a conspicuous place on the exterior of each container of such agricultural seeds, a plainly written or printed tag or label in the English language stating:

\* \* \* \* \*

(f) The full name and address of the vendor of such agricultural seed.

\* \* \* \* \*

Section 5805-4 reads in part:

“Mixtures shall consist of two or more kinds of agricultural seeds which are grown together and sold, or are prepared and sold for general agricultural field purposes, each present in excess of five per cent by weight of the total mixture, when sold, offered or exposed for sale in lots of ten pounds or more such mixtures shall have affixed thereto in a conspicuous place on the exterior of the container of such mixture a plainly written or printed tag or label in the English language stating:

\* \* \* \* \*

(f) The full name and address of the vendor of such mixture.

\* \* \* \* \*

Section 5805-6 reads as follows:

"Agricultural seeds or mixtures of the same shall be exempt from the provisions of this act.

(a) When possessed, exposed for sale, or sold for food purposes only.

(b) When sold direct from grower to seed merchants to be cleaned or graded or shipped to a general market to be cleaned or graded before offered or exposed for sale for seeding purposes.

(c) When in store for the purpose of recleaning, or not possessed, sold, or offered for sale for seeding purposes within the state.

(d) When such seed is grown, sold and delivered by any producer on his premises for seeding purposes by the purchaser himself, unless the purchaser of said seeds demands and receives from the seller at the time of the sale a certificate that said seed is subject to the provisions of this act. If, however, said seed be advertised for sale through the medium of the public press or by circular letter or for delivery through a common carrier said producer shall be considered a vendor, and said seed must be labeled in accordance with the provisions of this act."

Section 5805-13 provides:

"For the purpose of defraying the cost of inspection and analyses of agricultural seeds under the provisions of this act it is hereby further provided that before any person, firm, company or corporation shall sell, offer for sale, expose for sale, or solicit for sale in this state any of the agricultural seeds, except as provided in section 6, subsection (d) of this act, he or they shall pay each year a license fee to the director of agriculture of five dollars, for each separate place of business in which seeds are offered for sale, and shall receive from said director of agriculture a certificate to sell agricultural seeds until the first day of January next following."

It is apparent, on a reading of these sections, that a license is required of anyone selling, offering for sale or soliciting for sale agricultural seeds in the state of Ohio, regardless of the amount of agricultural seeds offered for sale or sold. The only persons exempt from procuring a license as required by section 5805-13 are those who come within the provisions of section 5805-6, which section does not relate to the quantity of agricultural seeds sold.

A vendor of agricultural seeds in the state of Ohio pays a license only for each place in which agricultural seeds are offered, exposed, sold or solicited for sale. The phraseology of section 5805-13 expressly provides that the license required by that section is for each separate place of business where agricultural seeds are kept for the purpose of sale, and that no person, firm or corporation shall sell or offer for sale agricultural seeds in any place of business until and unless a license is first obtained, as provided by said section. In other words, there is no provision in section 5805-13 that requires a salesman, soliciting or taking orders for the sale of agricultural seeds in places other than those where such seeds are offered or exposed for sale, to first obtain a license, inasmuch as that section expressly provides that the license is to be obtained for each separate place of business in which seeds are offered for sale or sold.

Sections 5805-2 and 5805-4 require that a tag be placed or affixed on packages or containers of agricultural seeds and mixtures only when such seeds or mixtures are sold in quantities of ten pounds or more, except in the case of the

agricultural seed called rape, in which case a tag must be affixed on all containers or packages of one pound or more. When seeds are sold in quantities less than those provided for in sections 5805-2 and 5805-4, such seeds may be sold without the tags being affixed on the containers or packages.

Section 5805-2, sub-paragraph (f), and section 5805-4, sub-paragraph (f), expressly provide that the full name and address of the vendor of such agricultural seeds or mixtures must appear on the tag affixed to all packages or containers containing quantities of ten pounds or more of agricultural seeds or mixtures. The same requirement is made as to rape when sold in packages of one pound or more. The language of the sub-paragraphs quoted, as well as the other provisions of sections 5805-2 and 5805-4, indicates that the legislature intended that the tags or labels required by those sections be affixed to each package or container before leaving the premises of the vendor.

Your fourth and fifth inquiries raise the question of whether or not the director of agriculture has the power, express or implied, to revoke a license or to decline or refuse to renew or issue a license.

Section 5805-13, General Code, provides that no one shall sell seeds in Ohio until a license for each separate place of business in which seeds are offered for sale or sold is first obtained from the director of agriculture. The statute further provides that a vendor of seeds *shall* pay a license fee of five dollars to the director of agriculture and *shall* receive a certificate (license) from the director of agriculture. There is no express provision in the statute granting to the director of agriculture the power to revoke a license or to decline to issue a license. In fact, the phraseology used in the statute clearly indicates that the issuance of a license on the payment of the fee is mandatory and not discretionary with the director of agriculture. The statute fixes no conditions which must be complied with before a license may issue, other than the payment of the five dollar fee. In other words, the issuance of a seed license is not dependent on whether or not the applicant for a seed license is a fit or proper person to engage in the business of selling agricultural seeds in Ohio. The license is issued primarily to secure funds whereby the agricultural seeds sold in Ohio may be inspected and analyzed so as to prevent fraud as to quantity, quality and kind and not to regulate or supervise the persons engaged in selling seeds in this state.

The power to refuse to issue a license or to revoke a license would have been expressly conferred by statute if the legislature had intended to empower the director of agriculture with that authority. This conclusion finds support in view of the fact that the legislature has expressly conferred upon many administrative officers and boards the power to refuse a license or to revoke a license. The legislature in the following sections has expressly granted the power to revoke licenses: sections 364, 843-17, 892, 1090-17, 1170-60, 1325, 1343-2, 1431, 3672, 5868, 6259, 6346-2, 8624-22, 9477, 9490, 9556-10, 9563, 9589-4, 9884-8, 12730-3 and 13393. The power to refuse a license has also been expressly conferred upon administrative officers and boards. See sections 843-8 and 1295-31.

It may be contended that the power to refuse to issue a license or to revoke a license may be implied from the power to grant a license. In the case of *Smith vs. Major et al.*, 115 O. C. C. 362, it was held that a mayor could not revoke a license granted by him unless expressly authorized to do so by the city council. The syllabus reads, in part, as follows:

“Where an ordinance authorizes the mayor to issue annual licenses for carrying on shows etc., at a certain license fee to be paid to him, *but does not provide for a revocation of such license by the mayor where*

*such show* etc. is claimed to be improperly conducted, *the mayor has no power, on complaint being made*, to revoke the license and by virtue of such revocation to stop and interfere with such show, etc., \* \* \*." (Italics the writer's.)

The language of the court, at page 364, is particularly pertinent to your questions and reads as follows:

It appears to us, from the facts as stated, that the mayor had no power or authority to revoke that license. There is no provision of the ordinance cited whereby the mayor is invested with any such power. The council passed an ordinance authorizing the license to be given upon payment of the sum of one hundred dollars. The mayor was authorized to issue the license upon the payment of such sum; but it is nowhere provided that the mayor may revoke the license which he has given and forbid the plaintiff from carrying on his business."

To the same effect is the case of *The Greater New York Athletic Club vs. Wurster, et al.*, 19 Misc. 443 (N. Y.). The first paragraph of the syllabus reads as follows:

"The mayor of the city of Brooklyn has no power, under the charter and ordinances, to refuse to grant a license for a theatre or place of public amusement, or to revoke a license already granted."

The ordinance in question in that case reads, in part, as follows:

"The following named persons or classes of persons are hereby required to be licensed, and licenses shall be granted to them by the mayor to carry on their respective trades or occupations" etc.

The only provision contained in the seed act (secs. 5805-1 to 5805-15, G. C.), relative to the punishment of persons found violating the said law, is contained in section 5805-15, wherein the legislature has provided that a violation of any of the provisions of the seed act shall be a misdemeanor. That section does not provide for a forfeiture of an existing license or confer authority on the director of agriculture to deny or revoke a license because of the violation of any of the provisions of said law. The second paragraph of the syllabus of the case of *The Greater New York Athletic Club vs. Wurster, supra*, is pertinent and reads as follows:

"A violation of a theatre license cannot be punished by revocation of the license, but by enforcement of the penalties prescribed in the ordinance."

It therefore follows that the director of agriculture can not punish a violator of any of the provisions of the seed law by denying such a violator a license.

It is therefore my opinion, in specific answer to your questions, that:

1. All persons except those exempted by section 5805-6, General Code, must obtain a license for each place of business in which agricultural seeds are offered or exposed for sale, solicited for sale or sold as is required by the provisions of

section 5805-13, General Code, regardless of the quantity of agricultural seeds offered for sale or sold.

2. A salesman soliciting orders for agricultural seeds is not required to comply with the licensing provision of section 5805-13, General Code, when such orders are not solicited in any place where seeds are offered or exposed for sale, solicited for sale or sold.

3. The tags required to be affixed on packages or containers of agricultural seeds or mixtures must be placed thereon before leaving the premises of the vendor of agricultural seeds or mixtures.

4. The director of agriculture has no power, express or implied, to revoke a license issued by virtue of section 5805-13, General Code; nor does the director of agriculture have the power or authority, express or implied, to refuse to issue a license for the sale of agricultural seeds to one who has violated the provisions of the seed law of this state.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4080.

VACANCY—BOARD OF TOWNSHIP TRUSTEES—SELECTION OF SUCCESSOR TO FILL UNEXPIRED TERM UPON DEATH OF MEMBER—JUSTICE OF PEACE TO FILL VACANCY.

*SYLLABUS:*

1. *Where a member of a board of trustees of a township dies shortly before the beginning of a new term to which he had been elected, and a qualified elector in the township is appointed to fill the vacancy for the unexpired term in the manner provided by law, neither such appointee, nor a member of said board of trustees, who was defeated for re-election, is entitled to hold over after the expiration of the old term of said deceased member until a successor to him is elected and qualified.*

2. *In such a situation, the justice of the peace holding the oldest commission in the township, should appoint a qualified elector in the township to fill the vacancy for the new term of the deceased member, in accordance with the provisions of sections 3265 and 3262, General Code.*

COLUMBUS, OHIO, February 20, 1932.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“Your opinion has been requested upon the following question concerning the office of Township Trustee and which is as follows:

‘C, F and L, were the duly elected, qualified and acting trustees of Brown Township, Carroll County, Ohio, for the term beginning January 1, 1930 and ending December 31, 1931.

At the election held November 1931, C, F, L and M were candidates for the election for the office of Township Trustee for the next ensuing