

3757.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE MID CONTINENT MUTUAL INDEMNITY COMPANY, CLEVELAND, OHIO.

COLUMBUS, OHIO, November 12, 1931.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your recent communication enclosing proposed articles of incorporation of THE MID CONTINENT MUTUAL INDEMNITY COMPANY, Cleveland, Ohio, for my examination and approval. There are several defects in the same to which I desire to call your attention.

In the caption and in the introduction of the articles, the proposed insurance company is referred to as "a mutual insurance company without capital stock and not for profit, under the General Corporation Act of Ohio, and Sections 9607-1 to 9607-38 of the General Code of Ohio." A mutual insurance company cannot be classed as a corporation not for profit. Inasmuch as it furnishes insurance protection for a consideration and it is intended to be at least self-supporting, if not profitable, to its policyholders, the designation of the proposed corporation as one not for profit is clearly erroneous and should be stricken.

Section III, subsection 12 of said articles contains an obvious typographical error, the word "from" appearing therein where the word "firm" is obviously intended.

Section III, subsection 15, of said proposed articles reads as follows:

"The management shall be in the hands of its Board of Directors consisting of not less than five or more than fifteen members, and all property shall be held by the trustees consisting of not less than three nor more than five members, the manner of election and duties of each shall be defined in the corporation by-laws and the directors shall elect such other officers as provided in the by-laws."

This provision for the appointment of trustees appears to have been suggested by Section 8623-106, General Code, governing the organization and management of corporations not for profit. This statute is not applicable to the corporation under consideration for the reasons hereinbefore pointed out. Under the applicable provisions of Section 9515, General Code, the affairs and property of such corporation must be managed by the board of directors as therein provided for. There being no statutory authority for the same, I am of the opinion that the provision for the management of the property of the proposed corporation by three trustees is wholly invalid. It is, of course, proper to provide that the board of directors may create a committee and delegate specified powers to such committee which otherwise would be performed by the board of directors. Section 8623-60, General Code.

Subsection 16, Section III, of said articles provides in part:

"Any member of the Board of Directors may be removed from office by a three-fifths vote of its members at a special meeting held for that purpose which meeting shall also have the power to elect the successor to anyone so removed."

This provision is ambiguous in that it may be interpreted to authorize the removal of a member of the board of directors by a three-fifths vote of the members of said board or a three-fifths vote of the members or policyholders of said company. This provision should be redrafted to provide for the removal of members of the board of directors by proper action taken by at least a majority of the company's members who shall also have the power to elect a successor. §§8623-55, -56, General Code.

The fourth section of said proposed articles designates three of the incorporators as trustees to act until the first annual meeting or other meeting called for the election of trustees. This provision seems also to have been borrowed from the sections of the General Code governing corporations not for profit which cannot apply to The Mid Continent Mutual Indemnity Company. See Section 8623-106, General Code. Until the board of directors are elected, it is apparently the intent of the legislature that the incorporators shall act for the corporation. Section 9607-3, General Code.

I note that the name of the notary public who received the acknowledgment of the signers of said proposed articles of incorporation neither appears in the imprint of his notarial seal nor is it typed, printed or stamped near the signature of such notary public. Section 123, General Code.

By reason of the foregoing, I am compelled to return the proposed articles of incorporation of The Mid Continent Mutual Indemnity Company, Cleveland, Ohio, unapproved.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3758.

APPROVAL, BONDS OF SPRINGFIELD TOWNSHIP, MAHONING COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, November 13, 1931.

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

3759.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONTRACT FOR INDUSTRIAL SURVEY AND STUDY OF FLOOD CONDITIONS.

SYLLABUS:

Legality of contract with county commissioners discussed.

COLUMBUS, OHIO, November 13, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows: