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COUNTY COURT JUDGE—MAY HEAR CASES INVOLVING VIOLATIONS OF MUNICIPAL ORDINANCES WHEN—§§1907.-031, 1907.101, 2931.02, 2931.08, R.C.

SYLLABUS:

Corporations organized under Chapter 1731., Revised Code, prior to its repeal, continue to exist and have the powers to own property, to sell property and to dissolve, but have been rendered powerless to effectuate any of the purposes of or to exercise any of the authority granted by such Chapter. Inasmuch as such corporations were organized pursuant to Section 1731.01, Revised Code, and not Chapters 1701. or 1702., Revised Code, or the predecessors of these chapters, they may not now amend their articles of incorporation to provide for a new corporate purpose.

Columbus, Ohio, March 16, 1960

Hon. Ted W. Brown, Secretary of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“Since the repeal of Chapter 1731 of the Revised Code by the 1959 Legislature, this office has had numerous requests as to the status of those organizations organized in prior years pursuant to Chapter 1731 of the Revised Code and former Sections 10200 to 10206 of the General Code.

“As this office is in doubt as to the status of those corporations organized under Chapter 1731 of the Revised Code, we are asking for your opinion concerning the following three questions. 1—Did repeal of Chapter 1731 automatically terminate the existence of all of those corporations organized pursuant to the Chapter prior to its repeal? 2—If your answer to question one is ‘no,’ did such repeal permit the corporation to continue to exist but without the police power granted by the repealed statutes and 3—If your answer to both number one and two above is ‘no’ may the corporations continue to exist if their articles are amended to eliminate all references to the apprehension and conviction of criminals.”

Your inquiry raises the interesting question of what becomes of a corporation when the statutes under which it was originally incorporated are repealed.

While no decision of an Ohio court has been found on this matter the dicta in some Ohio cases and decisions from other jurisdictions provide an answer. The famous case of *Trustees of Dartmouth College vs. Woodward*, 4 Wheat. 518, established the doctrine that a corporate charter is a contract between the state and the corporation and that the state may not impair this contract by subsequent legislation. Seizing upon the concurring opinion of Mr. Justice Story in the *Dartmouth College* case, many states, including Ohio, enacted provisions reserving to the Legislature the right to amend or repeal statutes under which corporations may be formed. In Ohio this was accomplished by inclusion in the Constitution of 1851 of Article XIII, Section 2. This Section reads, in part, as follows:

“Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. * * *”

It has been held that this provision of the Constitution is legally a part of every corporate charter issued in Ohio since 1851. *Harper vs. Ampt*, 32 Ohio St., 291; *State, ex rel. Crabbe vs. Massillon Savings & Loan Company*, 110 Ohio St., 320. See also 12 Ohio Jurisprudence, 2d, 114.

While thus in Ohio, it cannot now be questioned that the state has the right to repeal laws under which any corporation since 1851 may have been formed, this, in itself, does not provide an answer to the question whether the corporation originally validly chartered, continues to exist when the legislative authority for such charter ceases to exist. A leading case on this point is *Greenwood vs. Union Freight Railroad Co.*, 105 U.S.,

13 (1881). In this case the Supreme Court of the United States, through Mr. Justice Holmes, while upholding the right of a state to exercise its reservation of the right to repeal a corporate charter, held that "personal and real property acquired by the corporation during its lawful existence, rights of contract, or choses in action so acquired, and which do not, in their nature, depend upon the general powers conferred by the charter, are not destroyed by such a repeal." Even though the Court in the *Greenwood* case was construing the direct repeal of a legislative grant of a corporate charter, no reason appears why the same principle should not apply to the repeal of general laws under which corporations are formed. See also 1 Davies on Corporations, 13.

It follows from this application of Article XIII, Section 2 of the Ohio Constitution and the *Greenwood* case, *supra*, that any exercise of corporate powers formerly authorized by Chapter 1731., Revised Code, would be invalid and unlawful. Equally unlawful would be the exercise of any corporate purpose included in the purpose clause of such a corporation's articles of incorporation or in its constitution or by-laws since any purpose of a special corporation must be authorized by one of the statutes governing its creation. All such powers are now completely beyond the limits of such corporation's authority and any attempted exercise of them would provide a proper cause of action for the institution of a suit *in quo warranto* as prescribed by Section 2733.02, Revised Code.

This does not necessarily apply, however, to the exercise of proprietary rights and privileges of the corporation. Assuming that such a corporation were validly incorporated under the provisions of Chapter 1731., Revised Code, prior to its repeal, it would still be a corporation even though it would have no purpose to fulfill. It would have the power to own property, to sell or otherwise dispose of its assets and to dissolve. Since these rights are not dependent on the powers authorized in Chapter 1731., Revised Code, they could not be affected by its repeal. This was the doctrine of the *Greenwood* case, *supra*, and is supported by the theory of corporate organization.

In answer to your final question, I do not believe that a corporation organized under Chapter 1731., Revised Code, has the power to amend its articles of incorporation to eliminate all references to the powers conferred by Chapter 1731., Revised Code, and to continue its corporate existence as if it had been originally incorporated under Chapters 1701. or 1702, Revised Code. Such corporations were in fact organized under and

by virtue of the legislative grant of authority contained in Chapter 1731., Revised Code. A corporation cannot now change the original source of its power by claiming authority granted by the legislature to other corporations under and by virtue of chapters 1701. or 1702., Revised Code. Nothing, of course, would prevent the members of a corporation organized under Chapter 1731., Revised Code, from dissolving such corporation and forming a new corporation under the existing general corporation laws of Ohio for the exercise of any lawful purpose.

I am of the opinion, therefore, and you are accordingly advised that corporations organized under Chapter 1731., Revised Code, prior to its repeal, continue to exist and have the powers to own property, to sell property and to dissolve, but have been rendered powerless to effectuate any of the purposes of or to exercise any of the authority granted by such Chapter. Inasmuch as such corporations were organized pursuant to Section 1731.01, Revised Code, and not Chapters 1701. or 1702., Revised Code, or the predecessors of these chapters, they may not now amend their articles of incorporation to provide for a new corporate purpose.

Respectfully,

MARK McELROY

Attorney General