

3335.

BANK—INCORPORATED TO DO BUSINESS IN NAMED VILLAGE—ARTICLES OF INCORPORATION AMENDED, PRIOR TO TRANSACTION OF BUSINESS CHANGING SUCH BANK'S NAME—RIGHT TO NOW AMEND ARTICLES TO CHANGE PRINCIPAL PLACE OF BUSINESS PROVIDING SUPERINTENDENT OF BANKS CERTIFIES APPROVAL.

*SYLLABUS:*

*When a bank has a legally established branch in a village contiguous to the village in which its principal place of business is located, such bank may file with the Secretary of State its amended articles of incorporation changing its principal place of business to that of its branch bank, which articles may be recorded by the Secretary of State upon the issuance to him by the Superintendent of Banks of a certificate approving such amendment.*

COLUMBUS, OHIO, June 17, 1931.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The M. Banking Company, located at M., Ohio, was incorporated under the laws of this state on January 17, 1923. On October 11, 1923, amendment to its articles of incorporation was filed in the office of the Secretary of State, by which said amendment it changed its name to that of The M. N. Banking Company, which amendment referred to was made prior to the date it began to transact business, to wit, January 4, 1924, upon which said date the Superintendent of Banks issued his certificate of authorization, as provided in Section 710-56 of the General Code of Ohio. A branch was legally established at N., an incorporated village contiguous to M.

I am advised it later developed there was more business at N. than at M. and thereupon the above named bank was moved from M. to N. and a branch conducted at M.

In order to correct this situation may The M. N. Banking Company, by amendment to its articles of incorporation as provided in Section 8623-14 of the General Code, change the location of its place of business from M. to N.?”

Articles of incorporation of a bank organized under the banking laws of Ohio must contain “the place where its business is to be transacted, designating the particular city, village or township.” Section 710-41, General Code.

The community in which a bank is located is to be considered by the Superintendent of Banks as a material factor in determining whether or not a certificate should be issued to the Secretary of State authorizing the recording of the articles of incorporation of such bank. Section 710-44, General Code, provides that the Superintendent of Banks may refuse to so certify to the Secretary of State if upon examination and investigation he has reason to believe “that the public convenience and advantage will not be promoted by its establishment”. It has obviously been the general policy of the legislature of this state to localize a bank's business. This is in keeping with the general practice in other states. Tiffany on Banks and Banking, p. 270, says:

"The charter or articles of incorporation usually designate the place—that is, the city or town—where the business is to be transacted or the banking house is to be located. It seems that the effect of this is to confine the bank to that place, and that, unless expressly authorized, it may not establish a banking house or agency elsewhere for the purpose of receiving deposits and conducting a general banking business."

In the case of *Bruner v. Citizens Bank*, 120 S. W. at p. 348 (Kentucky), the court said:

"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."

Authority for the establishment of branch banks in this State is subject to the consent of the Superintendent of Banks being granted prior thereto. Section 710-73, General Code, provides inter alia:

" \* \* \* \* No branch bank shall be established until the consent and the approval of the superintendent of banks has been first 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. \* \* \* \* ."

This section was considered in an opinion of this office appearing in Opinions of the Attorney General for 1920, Vol. II, p. 1066, the first branch of the syllabus being as follows:

"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."

Obviously, the question of whether or not "the public convenience and advantage" will be promoted by the establishment of a branch bank, must be considered by the Superintendent of Banks in the issuance of his consent and approval.

In the instant case, the branch having already been established pursuant to the consent and approval of the Superintendent of Banks, the question of the need of a bank in the locality where the branch has been established has already been determined, so that as I view your question it is one of technical procedure rather than substance.

I find nothing in the banking act of Ohio prohibiting the amendment of a bank's articles of incorporation in the manner sought. It, therefore, becomes necessary to examine the General Corporation Act—this in view of Section 710-52, General Code, which provides as follows:

"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 (G. C. §§710-1 to 710-189)."

Section 8623-14, General Code, provides that corporations organized under the provisions of the General Corporation Act may, by amendment, "change the place in this state where the principal office is to be located." The term "articles" is generally stated in Section 8623-2, General Code, to include amended articles and therefore it is my view that when a bank files amended articles with the Secretary of State, the certificate of the Superintendent of Banks must be issued to the Secretary of State before the same may be recorded as provided in the case of original articles of incorporation. Sections 710-44 and 710-46, General Code.

In the event a bank were to seek by amendment to change its principal place of business from one community to a city or village not contiguous, very possibly such an amendment would be inconsistent with Section 710-73, *supra*, particularly in view of the localized nature of banks as hereinabove commented upon. However, you do not inquire as to such matter and no opinion is expressed thereon.

Considering the specific facts which you present and in view of the foregoing discussion relative thereto, it is my opinion that when a bank has a legally established branch in a village contiguous to the village in which its principal place of business is located, such bank may file with the Secretary of State its amended articles of incorporation changing its principal place of business to that of its branch bank, which articles may be recorded by the Secretary of State upon the issuance to him by the Superintendent of Banks of a certificate approving such amendment.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3336.

CRIMINAL LAW—PERSON GUILTY OF MANSLAUGHTER MAY BE  
PLACED ON PROBATION.

*SYLLABUS:*

*When a person pleads guilty to or is convicted of the crime of manslaughter, he may be put on probation under authority of the provisions of section 13452-1 of the General Code.*

COLUMBUS, OHIO, June 17, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"I direct your attention to sections 13452-1 and 13452-2. The question that I desire your opinion on is whether or not a person pleading guilty to or convicted of manslaughter comes within the exceptions set out in section 13452-2. In other words, my question is whether or not manslaughter comes within the term of 'murder' as the same is used in said section 13452-2 of the General Code. In brief, can one plead