

2694.

BANKS AND BANKING—A BANK INCORPORATED UNDER OHIO LAWS CANNOT AMEND ITS ARTICLES OF INCORPORATION SO AS TO AUTHORIZE IT TO ENGAGE IN TITLE GUARANTEE AND TRUST COMPANY BUSINESS.

A bank incorporated under the laws of this state cannot, under existing laws, amend its articles of incorporation so as to authorize it to engage in the title guarantee and trust company business. Section 710-1 et seq.; 9850 et seq.; and 8719 G. C., considered.

COLUMBUS, OHIO, December 14, 1921.

Department of Commerce, Division of Banks, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date inquiring if a bank, incorporated under the laws of this state with commercial and savings bank and trust departments as authorized by section 710-41 G. C., may amend its articles of incorporation so as to authorize it also to exercise the powers and authority conferred upon title guarantee and trust companies by sections 9850 et seq., G. C., was duly received.

The purposes for which a bank and a title guarantee and trust company are incorporated are substantially different. This is disclosed by the bank act considered as a whole, and particularly by section 710-2 G. C. which defines the term "bank," and by sections 9850 et seq., which enumerate the powers of title guarantee and trust companies, or the different activities in which they may engage. This difference is especially emphasized by the provision in section 710-2 G. C. that the term "bank" shall not include title guarantee and trust companies incorporated under the laws of this state.

A careful examination of the bank act fails to disclose any authority, either express or implied, conferred upon banks to include in their articles of incorporation, either originally or by way of amendment, a provision authorizing them to engage in the title guarantee and trust company business, nor is any such authority to be found in the group of statutes governing title guarantee and trust companies.

There being no provision in the bank and title guarantee and trust company laws authorizing the proposed amendment, it is proper to inquire if it can be accomplished under the general corporation laws of the state. See section 710-52 G. C., which provides that banking corporations shall be governed "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."

The amendments to articles of incorporation authorized by the general incorporation laws are enumerated and referred to in section 8719 G. C. The specific enumeration of authorized amendments includes changes in name, location, and capital stock. The changes authorized in general terms by the same statute include enlargement of the objects or purposes for which the corporation was formed, but this authority is expressly qualified and limited by the clause, "but not substantially to change the purpose of its original organization." Another amendment authorized in general terms, is that of adding to the articles "anything omitted from, or which lawfully might have been provided for originally."

What has heretofore been said with respect to the purposes for which banks and title guarantee and trust companies are incorporated, and the absence of legislation conferring upon banks the right to engage in the title

guarantee and trust company business, clearly demonstrates, first, that the proposed amendment would, if permitted, amount to a substantial change in the purpose for which the bank was originally organized, which character of change is expressly prohibited by section 8719 G. C.; and, second, that the power to engage in the title guarantee trust company business is one that could not have been provided for in the articles of incorporation originally. The proposed amendment, therefore, cannot be sustained under the general corporation laws. See *State vs. Taylor*, 55 O. S., 61.

It might be suggested in this connection that because sections 710-168 and 710-170 G. C. expressly empower title guarantee and trust companies "heretofore organized and now existing," to establish a commercial or a savings bank, or a combination of both, and to acquire trust company powers, the corresponding right or power of engaging in the title guarantee and trust company business should be enjoyed by banks. Sections 710-168 and 710-170, G. C., however, strictly confine or limit their respective grants of power not only to title guarantee and trust companies, but also to such companies as were organized before and existing at the time of the effective date of the bank act, as indicated by the words last quoted. They make no attempt to confer any right or power upon banks to engage in the title guarantee and trust company business, and neither those sections nor any others I have found can be so applied or extended as to confer such authority.

The mere fact that title guarantee and trust companies are empowered to take unto themselves banking and trust company powers, is not sufficient to vest banks with the power of engaging in the title guarantee and trust company business. The policy or wisdom of permitting one class of corporations to engage in business peculiar to another, while denying to or withholding from the latter the right to engage in a line or lines of business carried on by the former, is exclusively a matter for legislative determination, subject only to constitutional limitations. The question under consideration is exclusively one of power, and as a corporation has only such powers as are conferred upon it by law, expressly and by implication, and there appears to be no statute or group of laws authorizing the proposed amendment, the conclusion is that your question must be answered in the negative.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2695.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE HUGHES-PETERS ELECTRIC COMPANY OF COLUMBUS, OHIO, FOR ELECTRIC WIRING AS AN AUXILIARY TO HEATING SYSTEM IN SENATE CHAMBER OF THE OHIO STATE CAPITOL BUILDING AT A COST OF \$305—SURETY BOND EXECUTED BY GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, December 15, 1921.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted to me for approval a contract (four copies) between the state of Ohio, acting by the department of highways and public works, and the Hughes-Peters Electric Company, of Columbus, Ohio.