

2. To adopt, use and at will alter a common seal, but failure to affix a seal shall not affect the validity of any instrument;
3. To acquire, hold, convey, lease, mortgage or dispose of all property, real or personal, necessary or expedient to accomplish its purposes;
4. To borrow money and contract debts to accomplish its purposes;
5. To become an incorporator or member of any other corporation not for profit organized under the laws of this state."

Section 8623-112, General Code, with reference to holding property, reads:

"All property, real or personal, acquired by a corporation not for profit, by purchase, gift or otherwise, shall be the absolute property of such corporation, unless at the time of acquiring such property it be otherwise in writing specified."

From these and other sections of the "General Corporation Act" it is evident that a corporation not for profit, is an entity separate and distinct from its members.

My conclusion is given some support as to legislative intent by the language contained in Section 614-2a, General Code, which is the chapter of the Code relating to public utilities. Said section reads in part, as follows:

"The term 'public utility' as used in this act, shall mean and include every corporation, company, co-partnership, person or association, their lessees, trustees or receivers, defined in the next preceding section, *except such public utilities as operate their utilities not for profit*, etc. * *"
(Italics, the writer's.)

The legislature apparently recognized in this section, the existence of public utilities in the form of corporations not for profit, but did not intend to subject them to regulation by the public utilities commission.

If my deductions are correct, this corporation not for profit, by furnishing electricity to consumers rather than consuming the electricity itself, is a public utility within the meaning of Section 5415, General Code, and is subject to the provisions of that act.

Specifically answering your inquiry I am of the opinion that, when a corporation not for profit, purchases electricity at wholesale, measured through a master meter, and distributes this current through its own lines, to its members, and collects from them by assessment in proportion to the current used by each member, an amount sufficient to pay for the current, and maintains its lines and its overhead expense, such corporation not for profit, is a public utility within the purview of Section 5415, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4494.

APPROVAL, NOTES OF KILLBUCK RURAL SCHOOL DISTRICT,
HOLMES COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, July 11, 1932.

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