

improvement bonds in the aggregate amount of \$2500.00, dated July 1, 1939, and bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village school district.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

818.

BONDS—VILLAGE OF CUYAHOGA FALLS, SUMMIT COUNTY,
\$10,000.00.

COLUMBUS, OHIO, June 27, 1939.

Retirement Board, Public Employes Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the Village of Cuyahoga Falls, Summit
County, Ohio, \$10,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an authorized \$45,000 issue of waterworks improvement and extension bonds, dated December 26, 1918, and bearing interest at the rate of 5½% per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

819.

INSURANCE—MUTUAL PROTECTIVE ASSESSMENT ASSO-
CIATIONS—SECTIONS 9593 ET SEQ. G. C.—MAY NOT
PROVIDE FOR ALTERATION OR AMENDMENT OF BY-
LAWS BY BOARDS OF DIRECTORS WITHOUT ACTION
BY ASSOCIATION MEMBERSHIP.

SYLLABUS:

Mutual protective assessment associations organized under sections 9593, et seq., General Code, may not provide for the alteration or amend-

ment of their by-laws by their boards of directors without action by the membership of such associations.

COLUMBUS, OHIO, June 27, 1939.

HON. JOHN A. LLOYD, *Superintendent of Insurance, State House Annex, Columbus, Ohio.*

DEAR SIR: I have your letter of recent date in which you ask my opinion as to whether mutual protective assessment associations organized under sections 9593, et seq., General Code, may provide in their constitutions and by-laws for the alteration or amendment thereof by their boards of directors without a vote by the members of such associations.

The law authorizing the organization of such associations was enacted in 1877 and is found in 74 O. L., 66. Section 5 of the original act read as follows:

“All associations organized under the provisions of this act shall adopt for themselves such a constitution and by-laws, not inconsistent with the constitution and laws of this state or of the United States, as shall, in their judgment, best subserve the interests and purposes sought in their association, and all persons signing said constitution shall be considered and held to be members of said association, and shall be held in law to comply with all the provisions and requirements of said association.”

This section, with a few changes, has been carried into the General Code as section 9598 which now reads as follows:

“Every such association shall adopt such constitution and by-laws not inconsistent with the constitution and laws of this state or the United States, as *in the judgment of its members* best will subserve its interests and purposes. All persons who sign such constitution shall be considered and held to be members of the association, and be held in law to comply with all of its provisions and requirements.” (Emphasis the writer’s).

It will be observed that the law as it now reads requires such association to adopt a constitution and by-laws such as in the judgment of its members best will subserve its interests and purposes. This language contemplates action on the part of the members and not of the board of directors. If the board of directors were permitted to amend the constitution and by-laws after they had been adopted by the members, then the power of adoption vested in the members by law would be of little or no value.

On June 22, 1895, the Court of Common Pleas of Darke County, Ohio, in the case of *Bachman vs. Farmers’ Mutual Fire Insurance Com-*

pany, held that the directors of a company organized under the law found in 74 O. L., 66, could not amend or alter the constitution and by-laws of such a company. Error was prosecuted to the Circuit Court which, after quoting the provisions of section 5, supra, of the original act and the provision of the constitution and by-laws authorizing the directors to amend same, made the following observation :

“Now, does this language that its constitution and by-laws may be amended at any meeting of the board of directors by a majority of the members present, mean members of the association, or members of the board of directors? Certainly, if it means to authorize the constitution to be changed by a majority of the members of the board of directors, it is wholly invalid.”

This decision was affirmed by the Supreme Court without report. If the directors had no authority to amend the constitution and by-laws under the law as originally enacted a fortiori they have no legal right to make such amendment under the present law which contains the language “in the judgment of its members.”

In this connection, I have not been unmindful of section 9607, General Code, which reads as follows :

“After such change in the plan of insurance by such association, and the organization of such mutual fire insurance company, policies thereafter issued shall be in the name and by the authority of the company, and the policies theretofore in force, and the by-laws, rules and regulations of such association, if not in conflict with the laws governing mutual fire insurance companies, shall remain in full force and effect until they have terminated or been lawfully changed by the company or its board of directors.”

This section applies only when such mutual association may re-organize as a mutual insurance company under the provisions of section 9604, General Code, and has no application to the case which you present.

In specific answer to your question, I am of the opinion that mutual protective assessment associations, so-called, organized under the provisions of sections 9593, et seq., General Code, may not provide that their by-laws may be amended by their boards of directors without action by the membership of such associations.

Respectfully,

THOMAS J. HERBERT,
Attorney General.