

481.

CORPORATION — ELEVATOR COMPANY — DEALING IN GRAIN AS BUYER OR SELLER PROHIBITED

SYLLABUS:

By virtue of the provisions of Section 10172 of the General Code, if a corporation is organized as a public grain elevator company, such corporation may not deal in grain as buyer or seller, on its own account or for others.

COLUMBUS, OHIO, June 5, 1929.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

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

“The following question has been presented to our office for an opinion, and we being unable to give a satisfactory answer to the same, submit the same to you herewith, with the request that you give us an official opinion upon the question presented herein, at your convenience:

An elevator company which is being organized by a group of individuals in this community, desires to follow the practice of the majority of such organizations and to buy and sell grain on their own account or act as agent for others in such transactions.

Section 10172 of the General Code provides that an elevator company shall not, “on its own account or for others it shall not deal as buyer or seller.”

We are unable to place a reasonable interpretation upon this provision of the General Code which would enable an elevator company to buy or sell on its own account or for others, or to act in any other capacity except as a storer or holder of the goods for other persons. This is an almost prohibitive restriction upon a company organized for the purpose of carrying on a business of this character.

May we not, at your convenience, have an opinion as to the correct interpretation of this section of the Code, so that we may be able to advise these parties, in order that they may comply with the intent and purpose of the law?”

Section 10172, General Code, was enacted March 29, 1867, as Section 3 of “An Act to authorize the incorporation of elevator companies.” It is as follows:

“A company or association organized as an elevator company may purchase and hold real and personal estate, erect or purchase, and own, the necessary buildings, offices, and machinery for the purpose of carrying on the business of receiving, storing, delivering and forwarding grain of all kinds, and may add to and connect with this the business of general storage, warehousemen, and forwarders of all kinds of produce and merchandise. On its own account, or for others, it shall not deal as buyer or seller. In the prosecution of its business it shall be governed by the same laws, not inconsistent with this section, as govern individuals in such employment.”

In the absence of any subsequent enactment of the Legislature clearly nullifying the portion of this section which prohibits an elevator company from dealing in grain as buyer or seller on its own account or for others, this inhibition must stand.

Section 8623-3 of the General Code, being part of the General Corporation Act,

provides that a corporation for profit may be formed under that act for any purpose or purposes for which natural persons may lawfully associate themselves, provided that where special provisions are made in the General Code for the filing of articles of incorporation of designated classes of corporations, such corporation shall be formed under such provisions and not under the General Corporation Act. Again in Section 8623-132, being part of the same act, the Legislature has clearly indicated an intention not to nullify any special provisions of the General Code with reference to the conduct or government of such designated classes of corporations. This section is as follows:

“When special provision is made in the General Code for the incorporation, organization, conduct or government of corporations formed for any specified purpose, this act shall not apply, but the special provision shall govern unless it clearly appears that the special provision is cumulative.”

It could hardly be said that the special provision of Section 10172 under consideration is a cumulative provision. It is, on the contrary, a restrictive provision.

I am not unmindful of the fact that at the time Section 10172 was enacted, corporations could be organized for only one purpose, instead of with multiple purposes as now permitted. Under the provisions, however, of Section 8623-132, supra, it would appear that where a special provision is made in the General Code for the organization of corporations for special purposes, the General Corporation Act does not apply. In an opinion of my predecessor, being Opinion No. 2257, directed to the Superintendent of Banks, under date of June 20, 1928, the syllabus is as follows:

“1. A commercial bank, savings bank, trust company or a combination of two or more or all of such classes of business may not engage in the special plan banking authorized by Section 710-180 of the General Code.

2. A special plan bank, incorporated as such and functioning under Section 710-180, may not engage in the business of a commercial bank, savings bank, trust company or combination of two or more of such classes of business.”

The reasoning in the concluding paragraph is pertinent to the question at hand insofar as the matter of multiplicity of purposes may be considered in this case:

“In reaching my conclusions I have not overlooked the provisions of the general corporation act, particularly Sections 8623-3 and 8623-4, which authorize the formation of corporations under general law with dual purposes. The general corporation law is inapplicable by its express terms (General Code 8623-132) where special provision is made in the General Code for the incorporation of corporations formed for specified purposes. There being express provision found in the banking laws for the incorporation of banks, in my opinion the provisions of the general corporation act with respect to the purposes for which such corporations may be formed are inapplicable.”

With reference to the matter of regulating or restricting elevator companies, it has been generally held that public grain elevators are instruments of commerce and transportation, subject to public regulation. *Munn vs. Ill.*, 94 U. S. 113; *Public Utilities Commission vs. Smith*, 298 Ill. 151; 131 N. E. 371.

In view of the foregoing and in specific answer to your question, I am of the opinion that, by virtue of the provisions of Section 10172 of the General Code, if a

corporation is organized as a public grain elevator company, such corporation may not deal in grain as buyer or seller, on its own account or for others.

Respectfully,

GILBERT BETTMAN,
Attorney General.

482.

APPROVAL, AGREEMENT FOR RELOCATION OF HIGHWAY TO AVOID
RAILROAD CROSSING IN ATHENS COUNTY.

COLUMBUS, OHIO, June 5, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter under date of June 3, 1929, enclosing an agreement for the relocation of State (Inter-county) Highway No. 554, to avoid crossing the tracks of the Baltimore and Ohio Railroad Company near New Marshfield in Waterloo Township, Athens County, Ohio.

I have carefully examined said agreement and find the same to be correct in form and hereby return the same with my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

483.

APPROVAL, CONTRACT FOR RECONSTRUCTION OF BRIDGE OVER
PENNSYLVANIA RAILROAD, IN CALDWELL, NOBLE COUNTY,
OHIO.

COLUMBUS, OHIO, June 5, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

Dear Sir:—This will acknowledge receipt of your letter under date of May 24, 1929, enclosing a copy of a contract providing for the reconstruction of a bridge over the tracks of the Pennsylvania Railroad on the extension of State (Inter-county) Highway No. 353 and State (Inter-county) Highway No. 391, known as North Street in the village of Caldwell, Noble County, Ohio.

I have examined the agreement and find it to be correct in form, and return the same with my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.