3915.

INSURANCE COMPANY—WHERE ARTICLES OF INCORPORATION APPROVED BY ATTORNEY GENERAL, ALL AMENDMENTS MUST BE LIKEWISE APPROVED.

SYLLABUS:

Where the provisions of the General Code require the approval of the Attorney General of articles of incorporation of insurance companies, a like approval must be endorsed on all amendments thereto.

COLUMBUS, OHIO, January 5, 1932.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your request for my opinion which reads:

> "Certain of the sections of the General Code having to do with the filing of articles of incorporation and subsequent filings by insurance companies require that the articles be submitted to the Attorney General for approval before being filed in the office of the Secretary of State. In some cases the sections specifically provide that certificates of increase and other filing made after the filing of articles shall also be submitted to the Attorney General. In other cases the sections are silent in such respect.
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> As a specific instance, Section 9512 requires that articles of incorporation of certain insurance companies other than life must be submitted to the Attorney General for approval. Section 9531 providing for stock increases by such companies, however, makes no mention of any requirement which would necessitate submitting the increases for approval of the Attorney General before filing in this office.
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> Section 2 of the general corporation act, that is G. C. 8623-2, defines 'Articles' as including the articles of incorporation, amendments thereto, agreements of consolidation, certificates of reorganization or amended articles, and all certificates heretofore or hereafter required or permitted to be filed in the office of the Secretary of State.
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> In view of this definition and what we believe to be the construction of the insurance sections by the Superintendent of Insurance, your early advice will be appreciated as to whether or not a requirement in any of the insurance sections of the Code calling for the submission of articles of incorporation for the approval of the Attorney General, is to be construed as including all subsequent filings by the same company which are required or permitted by law to be filed in this office."

It is pertinent to your inquiry to note the provisions of the General Code relative to the approval by the Attorney General of articles of incorporation and amendments thereto.

Original articles of incorporation of legal reserve life insurance companies are required to be approved by the Attorney General. Section 9341, General Code.

The provisions of the insurance laws governing legal reserve life insurance companies are silent as to any requirement that the Attorney General shall approve amendments to articles.

In this connection it should be noted that domestic life, accident and health

insurance companies, either stock, mutual, stipulated premium or assessment, are authorized to consolidate by a proceeding under sections 9351 to 9356, inclusive, General Code. The Attorney General, together with the Governor or his representative, and the Superintendent of Insurance are required to approve such consolidation. Section 9355, General Code.

Section 9555, General Code, authorizes domestic fire, marine, fidelity, accident, plate glass, boiler or other insurance company to reinsure all its risks in any company authorized to do a similar business in this state, subject to the approval of the Superintendent of Insurance. This might result, in effect, in a consolidation but technically would not ordinarily involve an amendment to the articles of incorporation of either company. This being true, there would be nothing to file with the Secretary of State within the provisions of section 8623-2, General Code, quoted supra. It is not within the scope of this opinion to discuss the several points of conflict between sections 9351 to 9356, and section 9555, General Code.

Sections 9427 to 9444, inclusive, General Code, governing mutual protective life, health and accident associations, contain no reference to approval of the original articles of incorporation of domestic associations by the Attorney General.

Section 9428, subsection 6, General Code, applying to mutual protective life and accident associations, specifically authorizes the amendment of articles of incorporation as provided in the General Corporation Laws in effect at the time of the enactment of Section 9428, General Code, in its present form. The sections of the General Corporation Act cited in Section 9428, supra, (former sections 8719 to 8723, inclusive, General Code), have been repealed and replaced by analogous provisions bearing other code numbers. In such instances, the amendments obviously need not have the approval of the Attorney General.

Sections 9429-1 to 9429-3, inclusive, General Code, provide that mutual protective life and accident associations may amend their articles of incorporation to permit the transaction of the business of life insurance on the mutual plan, subject to the approval of the Superintendent of Insurance only. Section 9429-3, General Code, provides that sections 8720 to 8723, General Code, repealed in 112 O. L. 9 (58), should not apply to associations so amending their articles.

Sections 9445 to 9451, inclusive, General Code, authorizing the incorporation of mutual protective accident and health associations, contain no requirement for the approval by the Attorney General of the articles of incorporation or any amendment thereto.

Sections 9462 to 9509, General Code, governing the organization and management of fraternal benefit societies, do not require the approval of the Attorney General of the articles of incorporation of such associations. In fact, such requirement is negatived by Section 9473, General Code, which requires that the articles and all steps of the organization shall be approved by the Superintendent of Insurance, in whose office said articles must be filed. It is to be further noted that Section 9465 exempts fraternal benefit societies from the provisions of the insurance laws of the state, with such exceptions as are in said statute defined.

Section 9491, General Code, authorizes the organization of associations similar to fraternal benefit societies which, upon satisfying the conditions therein set forth, shall be exempt from the laws applying to fraternal benefit societies. In effect, this makes such organization subject only to the provisions of the General Corporation Act governing the organization and management of corporations not for profit. See sections 9427-7, 9429-4, 9459, General Code.

The articles of incorporation of an insurance company other than life, having

capital stock, shall be approved by the Attorney General. Section 9512, General Code. There is no express provisions in Subdivision II, Chapter 1 of the General Code, containing the above section, requiring the approval by the Attorney General of any amendment to the articles of incorporation of such corporation.

Section 9531, General Code, sets forth the conditions precedent, whereby insurance companies authorized by Section 9512, General Code, supra, may increase their capital stock. Here again, the statute is silent in reference to any requirement of approval by the Attorney General of the certificate therein required. It has been held that Section 9531, General Code, is exclusive in its requirements as to the necessary authority for increasing capital stock of such insurance companies. Annual Report of the Attorney General for 1911-12, p. 126, in which it was held that the provisions of the General Corporation Act, in reference to increases of capital stock, did not apply to insurance companies. The same has been held in reference to life insurance companies under Section 9345, General Code. Annual Report of the Attorney General for 1912, Vol. I, p. 24.

I am unable to find any section of the General Code expressly requiring that certificates of increase of capital stock must be submitted to the Attorney General for approval before the same are permanently filed with the Secretary of State as stated in your letter.

Reciprocal insurance associations are authorized by Sections 9556-1 et seq., General Code. No approval by the Attorney General of such inter-insurance contracts is required and such associations are exempt from other insurance laws unless referred to in the act authorizing the inter-insurance contracts. Section 9556-1, General Code.

An anomalous situation is created by Section 9594, General Code, authorizing the organization of mutual protective, fire, tornado, etc., insurance companies. This section specifically requires amendments to the certificate of incorporation to be approved by the Attorney General, but I find no provision of the General Code requiring such approval of the original articles.

Section 9604, General Code, authorizes the reorganization of such mutual protective association into mutual insurance companies. It is provided that the Superintendent of Insurance shall endorse his approval of such reorganization before the same may be recorded by the Secretary of State. Section 9605, General Code.

Sections 9608, et seq., General Code, authorize the organization of live stock assessment associations. No requirement as to the approval of the Attorney General of articles of incorporation or amendments thereto, is contained in the pertinent statutes.

Credit guaranty insurance companies are organized in a similiar manner to legal reserve stock life insurance companies. Specific reference is made to the statutes governing legal reserve stock life insurance companies in Section 9621, General Code. The requirements of these statutes would include the necessity of the approval of the Attorney General on the original articles of incorporation.

Section 9623, General Code, authorizing the increase of capital stock of credit guaranty insurance companies, provides that such companies may increase their capital stock by complying with the conditions of Section 9365, General Code. pertaining to increases of capital stock by life insurance companies.

Title IX, Division III, Subdivision II, Chapter 2-1 is headed "Mutual Fire Insurance." An examination of the statutes contained therein (sections 9607-1 to 9607-38, General Code) discloses that authority is thereby conferred for the transaction of most kinds of insurance business except life, by mutual, as well as

stock insurance companies. The language of the sections of the General Code contained in said chapter, having particular reference to the organization and management of insurance companies, leads to the conclusion that they are applicable only to mutual insurance companies of the kind authorized. Apparently the statutes therein set forth are the only ones containing express requirement that articles of incorporation and all subsequent amendments thereto must be approved by the Attorney General.

The lack of uniformity as to the requirement for the approval by the Attorney General of articles and amendments is naturally explained by the fact that the statutes governing the various forms of insurance companies were enacted at different times and have been subject to frequent amendment. Where the pertinent statutes do not require that the Attorney Gneral approve either the original articles of incorporation or subsequent amendments thereto, it is safe to conclude that the Attorney General need not approve either except so far as his opinion as to the validity of the same may be requested by the proper authority.

Section 8623-2, General Code, as amended by the 88th General Assembly, setting forth the definition of "articles of incorporation," reads as follows:

> "The term 'articles' shall include the articles of incorporation, amendments thereto, agreements of consolidation, certificates of reorganization or amended articles, and all certificates heretofore or hereafter required or permitted to be filed in the office of the secretary of state. * * * "

This definition is dispositive of your inquiry if it is applicable to articles of incorporation of insurance companies whose articles are required by law to be approved by the Attorney General. Since Section 8623-2, General Code, is part of the General Corporation Act of Ohio, the question raised above requires a construction of the provisions of Section 8623-132, General Code, which provides:

> "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.
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> No banking, safe deposit, trust or insurance corporation shall be authorized to issue shares without par value."

This section raises the second question as to whether the pertinent provisions of the insurance laws are clearly cumulative to Section 8623-2, General Code, so far as quoted above. It has been held generally by the Attorney General in the past that the General Corporation Act applies to insurance companies where the special provisions governing insurance companies are inadequate in their authority for the performance of any act of organization or management which is authorized by the General Corporation Act, which laws are not in conflict with the special provisions. See Annual Report of the Attorney General for 1914, Vol. I, pp. 147, 149, 229, 237; Annual Report of the Attorney General for 1912, Vol. I, p. 24.

Nowhere in the insurance laws is there a definition of "articles of incorporation." The effect, however, of applying this definition to insurance companies generally is to require the approval by the Attorney General of amendments to articles of incorporation, agreements of consolidation and certificates of reorganization required or permitted to be filed in the office of the Secretary of State.

and also certificates generally required or permitted to be filed by insurance companies in the office of the Secretary of State, if the special provisions governing any such insurance companies require that their original articles of incorporation must be approved by the Attorney General.

This brings us to the original question as to whether in those cases where approval of the Attorney General is required by statute on the original articles of incorporation of insurance companies and amendments of the articles of incorporation, certificates of increase of capital stock or any certificates affecting the powers of such insurance companies required or permitted to be filed with the Secretary of State, must be approved by the Attorney General.

A brief has been filed with me by interested counsel in which it is contended that amendments to articles of incorporation of insurance companies require the approval of the Attorney General only in such cases where the applicable statutes specifically so provide. This contention is based on the well established rule of statutory construction that where the legislature has made express provision in one instance and has failed to make similar provision in analogous instances, it intentionally excepted the second class from the operation of the rule laid down for the first. This principle of "Expressio unius est exclusio alterius" has been said to apply when the intent of the legislature is not otherwise manifest. See 2 Sutherland, Statutory Construction (2d Ed.), Sections 491-495.

Other rules of statutory construction can be cited in support of the above contention, such as that the intent of the legislature is to be found in the ordinary meaning of the words of the statute. *Woodworth* vs. *State,* 26 O. S. 196, 198.

Strictly speaking, the definition of articles of incorporation may include only the original articles and the fact that the context of the statutes which give rise to your question point only to requirements as to the original organization of insurance companies, lends strength to this limited definition of the word.

Another rule of statutory construction is that where the intention of the legislature is doubtful, the literal and obvious interpretation of the terms of the statute ought to be adhered to, although the result conflicts with a presumed public policy. *Smith Bridge Co.* vs. *Bowman,* 41 O. S. 37, 52.

The contention that the object in having the Attorney General approve the original articles of incorporation is defeated if, by amendment immediately after filing the original articles, the corporation can acquire illegal powers which might pass if not subjected to the scrutiny of the Attorney General, is an argument based on reasons of public policy. Such arguments are most properly addressed to the legislature. The contention that the public policy intended to be promoted by the statutes under discussion would be defeated by a literal interpretation of their provisions, might be answered by the observation that public policy is often another term for political expedience or that which is best for the common good of the community, which is a variable factor, dependent upon the education, habits, talents and disposition of each person who decides the question. To permit this to be a ground of judicial decision may undoubtedly lead to uncertainty and confusion in our laws. *Hurd* vs. *Robinson,* 11 O. S. 232, 237.

It has been held that a conviction that the legislature obviously intended to enact something different than what it did enact, does not warrant a broader construction than the express language of the statute sets forth. *Woodbury and Co.* vs. *Berry,* 18 O. S. 456.

Likewise, it has been held that because the application of an act of the legislature according to the express language of the law, did not bring the re-

sult desired, does not justify correction by judicial construction. *State* vs. *Bushnell,* 95 O. S. 203. See *Smith Bridge Co.* vs. *Bowman,* 41 O. S. 37, 52.

Where there exist no valid grounds for doubt as to the meaning of a statute, no construction of such statute should be indulged in. *Swetland* vs. *Miles,* 101 O. S. 501; *Fronce* vs. *Nichols,* 22 C. C. 539. To do so would be an encroachment on the power exclusively vested in the legislature. *State* vs. *Hanousek,* 19 C. C. 303.

The substance of the holding in *State* vs. *Cooley,* 2 N. P. (N. S.) 589, affirmed 74 O. S. 252, is most applicable to the statutes governing the organization of insurance companies. In this case, it was held that the Ohio statutes are a patchwork drawn by different persons at divers times and, accordingly, should not be examined for refinements of meaning in seeking to determine what the legislature really meant.

Even though the statutes are held not to require amendments to articles of incorporation, certificates, etc., to be approved by the Attorney General, it is entirely within the express power granted the Secretary of State to submit such amendments to the Attorney General for his opinion as to their legality and if found by the Attorney General not to be according to law, the Secretary of State may refuse to file or record the same. *State, ex rel.* vs. *Taylor,* 55 O. S. 61; *Trust Co.* vs. *Ford,* 75 O. S. 322, 334, both cases holding that the Secretary of State is not required to file amendments to articles of incorporation which do not comply with law.

Taking the other side of the question, there is an obvious intent on the part of the legislature in enacting the statutes under consideration to prevent purposes and powers from being inserted in articles of incorporation which are contrary to law. The statutes requiring the approval of the Attorney General of articles of incorporation can have no other purpose. If the requirement of the statute is satisfied by an approval of the original articles and amendments may thereafter be filed which are not subject to examination by the Attorney General, the object of requiring his examination of the original articles can be wholly defeated and made no more than an empty formality. This would be particularly apparent where an amendment was made by the substitution of new articles of incorporation, plus such additional provisions as may be inserted. Amendment by this method has been held entirely valid. See 1 Thompson on Corporations, 2nd Ed., Section 372.

In view of the natural conclusion that the legislature did not intend to enact a law which contained in its provisions, by a narrow interpretation, the substance of the defeat of its obvious purpose, it would seem that there is ample reason for liberal construction which will cure the latent defect. It has been held in many cases that where an ambiguity exists in a law, it is the duty of the court to give it such construction as will effect the intent of the enacting power, so that the intent may not be defeated by the use of some particular word. *Pancoast* vs. *Ruffin,* 1 Ohio 381, 386. Considering the special provisions requiring the approval by the Attorney General of articles of incorporation of insurance companies in connection with the provisions of Section 8623-2, General Code, an ambiguity is at once apparent in the insurance statutes referred to. The construction of a statute must not be such as to nullify its evident policy. *Beaver and Butt* vs. *Trustees of the Blind Asylum,* 19 O. S. 97, 108.

Where a statute is preventive or remedial in its character, it should be construed in reference to the evils it was intended to obviate. *Hays* vs. *Lewis,* 28 O. S 326, 337. Where there is no express limitation on the power in the statutes,

an inference should not be indulged in that will defeat the object of the law. *C. C. Cook & Cook* vs. *Hamilton County,* 3 O. F. D. 207.

In construing a statute, a word is not to be given a limited or specialized meaning until such meaning is attached by authority of legislative enactment. *Venable* vs. *Schafer,* 7 C. C. (N. S.) 337, 339.

The legislature has, in reference to corporations formed under the General Corporation Act, given an enlarged meaning to the word "articles" which, if applicable to insurance companies, will, where the specific statutes require approval of the Attorney General of articles of incorporation, effectuate the purpose of the legislature to prevent illegal provisions in articles of a corporation and subsequent amendments. In so far as the legislature has failed expressly to provide for the approval of the Attorney General of amendments to articles, certificates, etc., which have to do with the fundamental powers of the corporation, it would seem that the definition contained in Section 8623-2, General Code, can well be held to be applicable. This definition is not in conflict with the special provisions of the insurance laws but rather is an aid in making the special provisions effective.

You point out in your communication that the Superintendent of Insurance construes the statutes expressly requiring approval by the Attorney General of articles of incorporation of insurance companies to require a like approval by implication of amendments to said articles. Administrative interpretation of a statute is not conclusive but, where long continued, is to be given the greatest consideration. *Industrial Commission* vs. *Brown,* 92 O S. 309, 311; *State, ex rel.* vs. *Brown,* 121 O. S. 73, 75; *State* vs. *Evans,* 21 O. A. 168.

Recognizing the strength and validity of the arguments against the liberal interpretation of the statutes which contain no express provision as to the approval by the Attorney General of amendments to articles of incorporation, certificates, etc., I am not convinced that they are of such conclusive character as to prevent an interpretation which more closely conforms to the purpose of the particular statutes in question and the clear legislative policy of regulating insurance companies in the interest of the public good.

Based on the foregoing, I am of the opinion that where the provisions of the General Code require the approval of the Attorney General of articles of incorporation of insurance companies, a like approval must be endorsed on all amendments thereto.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3916.

APPROVAL, BONDS OF RIPLEY VILAGE SCHOOL DISTRICT, BROWN COUNTY, OHIO—$30,000.00.

COLUMBUS, OHIO, January 6, 1932.

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