

This case was affirmed by the Supreme Court without opinion in 82 O. S., 401. The distinction between this case and the liability of a clerk of the court of common pleas is stated by the court in that case at page 215:

“The bond of a sheriff in this case does not provide for the unconditional payment of any moneys which might come into his hands, but simply provides that he shall faithfully discharge the duties of his office. Nor do we think that the statute imposes upon him an unconditional liability. The statute defines his duty with reference to the money, but does not attempt to fix any liability except for a misapplication or misappropriation of the fund.”

It thus appears that there is no distinction in Ohio between the liability of a clerk of the Court of Common Pleas and that of a county treasurer.

I am therefore of the opinion that:

1. By reason of the terms or conditions of the bond of a clerk of the court of common pleas, required by the provisions of Section 2868, of the General Code, and by reason of the terms of the statute defining the duties of such officers, he is an insurer of all funds coming into his hands as such officer.

2. When a clerk of the common pleas court deposits money placed with him as security for costs and moneys received for fines, etc., in a bank until his regular monthly settlement, and if before such funds are withdrawn, such bank is taken over by banking authorities for the purpose of liquidation, the clerk of the common pleas court is liable for any loss of funds suffered thereby.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4057.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE GEM CITY
LIFE INSURANCE COMPANY.

COLUMBUS, OHIO, February 15, 1932.

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

DEAR SIR:—You have submitted to me for my approval the Certificate of Amendment to the Articles of Incorporation of the Gem City Life Insurance Company.

The resolution adopted by the shareholders reads as follows:

“BE IT RESOLVED, that the officers of this company are authorized to take such steps as may be necessary to change the corporate name of this company from The Gem City Life Insurance Company to Union National Life Insurance Company, and to transfer the executive offices to Charleston, West Virginia, * * * *”

There is no provision in the insurance laws providing for the amendment of the articles of incorporation of such a company except as to the increase of

capital. The general corporation laws relating to amendments would therefore apply. Report of the Attorney General for 1911-1912, page 98; Opinions of the Attorney General for 1918, Vol. II, page 1348.

Section 8623-15, General Code, provides the manner in which amendments shall be made. It provides as to such amendments that upon the adoption thereof by the affirmative vote of the holders of shares entitling them to exercise two-thirds (or such other proportion, not less than a majority, as the articles may permit or require) of the voting power of the corporation on such proposal, a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of the adoption of such resolution shall be filed in the office of the Secretary of State, and thereupon the articles shall be deemed amended according to such resolution.

It will be seen that this resolution does not of itself make the changes desired, but simply authorizes the officers so to do which they may or may not do. Whether or not the shareholders can delegate this power to the officers, the resolution itself should state that the articles be amended in the respects desired so that your office may know definitely that the changes actually have been made. Then upon the filing of the certificate containing the resolution and the manner of its adoption, the amendment becomes effective. Aside from the signing of the certificate by the proper officers, there are no steps to be taken by the officers to make the amendment effective.

The resolution also seeks to transfer the executive offices to Charleston, West Virginia. While there is nothing to prevent the location of executive offices of a corporation outside of the state, there is no provision in the statute relating to the articles of incorporation of such an insurance company that the articles shall contain the location of the executive offices. This statute, section 9340, General Code, does provide, however, that the charter shall set forth the place where the company is to be located, and it is likely meant by this amendment to change the location of the company which is designated in its articles. If this be true, then the amendment cannot be made because it provides for the change of such location to a place outside of the State of Ohio.

In Ohio, the place where the company is designated in the charter to be located is the domicile or residence of the corporation and this designation is conclusive. It is also well settled that a corporation must be domiciled in the state or sovereignty under whose laws it is created. 10 O. J. 219, 220.

As stated in the above authority:

"In the language of the courts, it must dwell in the state of its creation, and cannot migrate to another sovereignty."

It is to be noted also that section 8324-14, General Code, provides that a corporation may by amendment "change the place *in this state* where its principal office is to be located."

For the above reasons I am compelled to return the Certificate of Amendment without my approval.

Respectfully,

GILBERT BETTMAN,
Attorney General.