

3483.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE MONTENERODOMO BENEFICIAL SOCIETY.

COLUMBUS, OHIO, August 5, 1931.

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

DEAR SIR:—You have submitted for my opinion as to the validity of the same, the proposed Articles of Incorporation of The Montenerodomo Beneficial Society. The said Articles, exclusive of the fourth, read as follows:

“The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, not for profit, under the General Corporation Act of Ohio, do hereby certify:

FIRST. The name of said corporation shall be The Montenerodomo Beneficial Society.

SECOND. The place in this State where the principal office of the corporation is to be located Cleveland, Cuyahoga County.

THIRD. The purpose or purposes for which said corporation is formed are, and the mode in which its corporate powers are to be exercised, are as follows:

Said corporation is formed not for profit, but for the purpose of carrying on a fraternal and social benefit society, for the mutual benefit of its members and their beneficiaries, and to be open to all persons having immigrated from the City of Montenerodomo, Italy, now residing in Cuyahoga County, Ohio, and providing for the payment of benefits and such other purposes set forth by the Trustees of the Society, not inconsistent with but in accordance with the statutes of Ohio regulating such societies, in such cases made and provided.”

The language of the proposed articles is so broad as to indicate the purpose to organize an association similar to a fraternal benefit society. However, the failure to comply with the statutes governing fraternal benefit societies (see Section 9473, General Code and related sections) makes the proposed articles invalid for such purpose.

There is obviously no authority to incorporate a corporation not for profit for the purposes sought under the General Corporation Act, in view of Section 3623-97, General Code, which provides:

“A corporation not for profit may be formed hereunder for any purpose or purposes not involving pecuniary gain or profit for which natural persons may lawfully associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations not for profit, such corporations shall be formed under such provisions and not hereunder.”

It is, therefore, either necessary that the proposed articles be modified to comply with Sections 9462, et seq., General Code, governing fraternal benefit societies or modified to comply with Section 9491, General Code, governing corporations not for profit having purposes similar to fraternal benefit societies but strictly limited in scope.

Pertinent to this discussion, it was held in an opinion of the Attorney General, found in Annual Report of the Attorney General for 1913, p. 100, the syllabus of which reads:

"In order to authorize the secretary of state to accept the articles of incorporation of the Roumanian-American League, an institution formed for the purpose of mutual assistance and benefit socially, financially and cultural, it must be determined either that the association is not to have a lodge system with ritualistic form of work and representative form of government, or that the death benefits to be provided for shall not exceed \$100.00, or the disability benefits more than \$150.00, to any one person in any one year, and that certificates are not to be issued. These things must be stated in the articles of incorporation in order to authorize the secretary of state to accept such articles for filing."

Following the further provisions of Section 9491, General Code, not set out in the syllabus just quoted, an association which desires to exempt itself from the laws governing fraternal benefit societies might properly limit its powers in its articles in the following respects:

1. Limit its membership to five hundred.
2. Deny any power to issue *certificates* to its members providing for payment of benefits.
3. Deny any power to give any compensation to any person for obtaining members for the association.

The proposed articles are further defective in authorizing the trustees to add to the purposes of the association. The purposes of the corporation cannot in any event be substantially changed. Such limited change as can be lawfully made must be, by amendment, adopted by the members according to law and duly certified and filed. See Section 8623-113, General Code.

For the reasons herein stated, I am forced to advise you that the proposed articles should not be filed until the same have been modified to conform to the pertinent statutes.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3484.

APPROVAL, BONDS OF VILLAGE OF CYGNET, WOOD COUNTY, OHIO
—\$16,500.00.

COLUMBUS, OHIO, August 6, 1931.

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

3485.

APPROVAL, NOTES OF BEXLEY CITY SCHOOL DISTRICT, FRANKLIN
COUNTY, OHIO—\$375,000.00.

COLUMBUS, OHIO, August 6, 1931.

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