

road funds of the county, or the county's portion of the gasoline excise tax fund, other than a county road extending into or through a municipal corporation, or a part of a county road and a city or village street extending into or through a municipal corporation and forming a continuous road improvement, even though such street becomes out of repair by the use of the county's trucks thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2278.

CORPORATION—CHARITABLE TRUST—ARTICLES MUST INCLUDE
COPY OF WILL DIRECTING ORGANIZATION.

SYLLABUS:

Articles of incorporation, filed under authority of Section 10086 of the General Code, must set forth a copy of the will and testament to carry out whose provisions the corporation is organized.

COLUMBUS, OHIO, June 26, 1928.

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

DEAR SIR:—This will acknowledge receipt of your communication of June 20, 1928, which reads as follows:

“Your attention is directed to Section 10085 and the following Sections of the Code, and in particular to Section 10086.

These sections as you know have to do with the organization of charitable trusts.

I find that the practice has been in this department to require articles of incorporation for such corporation to include a full copy of the last will or testament directing the organization of such corporation.

On the other hand Section 10086 seems to be somewhat ambiguous. The first sentence and the last sentence apparently deal with two different contingencies.

In case the original executor or executors and the other persons named in the first sentence of the section file articles is it necessary that copy of the will be included in the articles?”

Sections 10085 and 10086 of the General Code are as follows:

Section 10085:

“When, by the last will and testament of a person, duly admitted to probate in this state or elsewhere, a decedent devised or bequeathed, or may devise or bequeath, his or her property, or a portion thereof, for charitable uses within this state, or for the establishment and maintenance of an industrial or educational school or institution to be located within the state; and when in such will it was or may be, provided that the executor or executors thereof shall organize a corporation under our laws, to receive the property so de-

vised or bequeathed, and carry out the charitable purposes therein expressed, or establish and maintain the institution or school it provides for, and such will further provides for the management of such corporation by a board of trustees or directors, consisting, in part, of officials of this state, of the county in which such charities are to be administered or institution or school located, of any municipality in such county, and the member of congress for the district of which it forms a part, or any of such officials, and names others to be associated with them or any of them, and also provides for the appointment of a successor or successors to the person or persons so appointed to act with such officials in a way specified in the will, such executor or executors, or his or their successors in office, and the persons hereinafter named, may constitute themselves a body corporate, with general powers of benevolent incorporations."

Section 10086:

"Such executor or executors, or his or their successors, shall associate with himself or themselves not more than two citizens and residents, other than the persons named in such will, of the county in which such charities are to be administered, or such institution or school located, and he or they and such associates shall execute, acknowledge and file with the Secretary of State articles of incorporation. In case of a will hereafter so probated, if within six months of such probate he or they do not file such articles, then a minority of the officials for the time being named in such will or testament may execute, acknowledge and file them, and therein must set forth:

1. A copy of the will or testament to carry out whose provisions the incorporation is organized.
2. The name of the corporation, including the name of the testator unless the will otherwise provides:
3. The location of such corporation."

These sections were originally enacted as Sections 1 and 2 of "An Act to provide for the administration of charitable trusts in certain cases," found in 95 O. L. p. 61. These two sections of the original act were carried into the Revised Statutes as Section R. S. 3796-1 and 3796-2, their language not being changed in any respect. There has been no substantial change in the language of Section 1 of the original act, now Section 10085 of the General Code, and hence it is only necessary to give consideration to the original provisions of Section 2. That section, as found in 95 O. L. p. 61, was as follows:

"Such executor or executors, or his or their successors, shall associate with himself or themselves not more than two citizens and residents, other than the persons named in said will, of the county in which such charities are to be administered, or such institution or school located, and he or they and such associates shall execute and acknowledge and file with the Secretary of State of the State of Ohio, articles of incorporation; or, in case he or they do not file such articles within sixty days from and after the passage of this act, or, in case of any will which may hereafter be so probated, within six months of such probate, then a minority of the officials for the time being named in any such will or testament may execute, acknowledge and file such articles, which shall in either case set forth:

1. A copy of the will or testament for the carrying out of whose provisions the incorporation is organized.
2. The name of the corporation, which shall include the name of the maker of such will, unless otherwise therein provided; and
3. The location of such corporation."

You will observe that the language differs in some respects from that of Section 10086, *supra*. Of particular pertinence is the omission of the words "in either case." The section as it originally stood clearly required that the articles of incorporation of a corporation organized for the administration of a charitable trust include a copy of the will or testament for the carrying out of the provisions of which the corporation is organized. It is only by reason of the deletion of the words above referred to that any ambiguity exists. No action with reference to these sections has been taken by the Legislature with the exception of that taken at the time of the adoption of the General Code. The Code was the result of the work of the codifying commission and one of the objects of the codification was to eliminate unnecessary words and reduce the statutes into as concise and comprehensive form as was consistent with the clear expression of the will of the General Assembly. Quite obviously it was with this purpose in mind that the elimination of the words referred to above was made and it was not the intention in any way to change the meaning of the section. Unfortunately, however, there is an ambiguity as the result of that work and it remains to be determined how that ambiguity shall be resolved in view of the history of the sections.

The rule as to the effect to be given to changes in the statutes made by the codifying commission is well settled. Thus in the case of *Elmwood Place vs. Schanzle*, 91 O. S. 354, the court, on page 357, states:

"It is well settled that where the general statutes of the state are revised and consolidated there is a strong presumption that the same construction which the statute had had before revision should be applied to the enactment in the revised form, although the language may have been changed. In such case a court is only warranted in holding the construction to be changed when the intent of the Legislature to make such change is clear and manifest. *State ex rel. vs. Commissioners of Shelby County*, 36 Ohio St., 326; *German-American Ins. Co. vs. McBee et al.*, 85 Ohio St. 161, 173."

Again, in the case of *Myers vs. Rose Institute*, 92 O. S. 238, the court on page 247, reiterates the rule in the following language:

"Upon rules of construction which are well settled, where the general statutes of the state are revised and consolidated, there is a strong presumption that the same construction which the statute had before revision should be applied to the enactment in the revised form, although the language may have been changed. *The State ex rel. vs. Commissioners*, 36 Ohio St., 326; *Heck vs. State*, 44 Ohio St., 536; *The State ex rel. vs. Stockley*, 45 Ohio St., 308; *Conger et al vs. Barker's Admr.*, 11 Ohio St., 1; *German American Ins. Co. vs. McBee*, 85 Ohio St., 173.

As stated in *The State ex rel. vs. Commissioners, supra*, the court is warranted in changing the construction given to a statute which has undergone revision, only when the intent of the Legislature to make such change is clear, or the language used in the new act plainly requires such change of construction to be made.

The language of the act of April 2, 1906, providing for the codifying commission, 'for the revision and consolidation of the statute laws of the state,' indicates the intention of the Legislature: 'The said commissioners shall bring together all the statutes and parts of statutes relating to the same matter * * * making alterations to harmonize the statutes with the constitution as construed by the courts, reconcile contradictions, supply omissions, and amend imperfections in the original acts, so as to reduce the general statutes into as concise and comprehensive a form as is consistent with clear expression of the will of the General Assembly, rejecting all equivocal and ambiguous words and circuitous, and tautological phraseology.'

In the light of these suggestions we are not able to say that it is clear that the Legislature at the time of the codification intended to change the law as it had theretofore for so long a time existed."

Authorities to the same effect might be amplified, but the rule is so clear that further discussion is unnecessary.

Since the statute in this instance, prior to the adoption of the General Code, clearly contemplated the incorporation of the will in the articles of incorporation, whether the articles were filed by the executor or executors and their associates or the officials, and since in the codification of the sections an ambiguity was created which renders it doubtful, which interpretation is correct, under the rule of the Supreme Court that interpretation should be adopted which is consistent with the clear legislative intent prior to the codification.

In the light of the foregoing, I am of the opinion that articles of incorporation, filed under authority of Section 10086 of the General Code, must set forth a copy of the will and testament to carry out whose provisions the corporation is organized.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2279.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE OTIS ELEVATOR COMPANY, CLEVELAND, OHIO, FOR THE CONSTRUCTION OF ONE ELECTRIC SERVICE ELEVATOR, NEW CHEMISTRY BUILDING, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$7,553.00—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, June 26, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the board of trustees of the Ohio State University, and the Otis Elevator Company, Cleveland, Ohio. This contract covers the construction and completion of one electric service elevator, New Chemistry Building, Ohio State University, Columbus, Ohio, and calls for an expenditure of seven thousand, five hundred and fifty-three dollars (\$7,553.00).