

the board of township trustees of the township, in which a part of such bridge is located, and the municipality may by agreement undertake the construction or repair of such bridge.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1335.

APPROVAL, BONDS OF THE VILLAGE OF WESTERVILLE, FRANKLIN COUNTY, OHIO—\$16,500.00.

COLUMBUS, OHIO, December 6, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1336.

RELIGIOUS ORGANIZATION—IF INCORPORATION NOT FOR PROFIT CANNOT SECURE THE BENEFITS OF SECTION 10011, GENERAL CODE.

SYLLABUS:

A religious organization incorporated under the general law as a corporation not for profit cannot, by amendment of its articles of incorporation, secure the benefits of the provisions of Section 10011 of the General Code.

COLUMBUS, OHIO, December 8, 1927.

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

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

“We are in receipt of an inquiry from the attorney for THE MISSION BOARD OF THE CHURCH OF THE BRETHERN OF THE SOUTHERN DISTRICT OF OHIO requesting advice as to whether or not the corporation named can at this time amend its articles of incorporation so as to avail itself of the benefits and provisions of House Bill 157, passed by the last session of our legislature amending G. C. 10011.

The corporation in question was incorporated by filing its articles of incorporation in this office November 18, 1915. The articles affirmatively state that the corporation is under the general corporation laws of the state.

Can a religious corporation so incorporated by amendment avail itself of the provisions of the section of the Code in question or will such an amendment effect a substantial change of purpose within the meaning of the general corporation act?”

The determination of the question you raise rests upon the last sentence of Section 10011 of the General Code, as amended in 112 O. L., p. 251, the whole section being as follows:

"When a presbytery, synod, conference, diocesan convention or other representative body of a religious denomination in this state, or when an assembly, synod, conference, convention or other general ecclesiastical body of a religious denomination held in the United States desires to create a board of trustees for an endowment fund or other property of the denomination represented by such body, and, at a regular meeting of such presbytery, synod, conference, diocesan convention or other representative, body of such denomination in this state, or of such assembly, synod, conference, convention or other general ecclesiastical body in the United States, elects not less than five members of such denomination, one of whom is a resident free-holder in this state, to serve as trustees, and makes and files in the office of the secretary of state a statement, giving the names of such trustees, the character of the endowment fund or other property to be intrusted to their care, and the uses to which it is to be applied, signed by the proper presiding officer and the secretary or clerk of such body, acknowledged before a clerk of a court of record, notary public or judicial officer having a seal, and the signing of it is duly attested by such officer, and the statement thus authenticated is recorded in the secretary of state's office, the persons named in such statement as trustees thereupon, with their successors in office, shall become a body corporate and politic for the purpose in such statement specified. A copy of the record, duly certified by the secretary of state, shall be evidence of the existence of the corporation.

Such statement of such presbytery, synod, conference, diocesan convention or other representative body so made and filed by it in the office of the secretary of state may provide that such corporation may purchase, sell, lease, mortgage or otherwise incur any real estate which it owns, or in which it has an interest, without petitioning for or obtaining an order of any court for permission so to do, and such provision in said statement, or in any properly adopted, certified and filed amendment thereof, shall give full power to said corporation to execute any deed, lease, mortgage or other incumbrance of any such property, without obtaining the order of any court so to do, and a covenant in said deed, lease, mortgage or other incumbrance that such statement, or amendment thereto, contains such provision shall be conclusive evidence that said corporation is authorized to execute the said deed, lease, mortgage or other incumbrance. The provisions of General Code 10051 shall not apply to a corporation created by virtue of the provisions of this section. The provisions of this section covering the execution of deeds, leases, mortgages and other incumbrances shall apply to all corporations heretofore created under the provisions of this section, the statement of which or any amendment thereto, contains such a provision."

Authority for the formation of this special kind of corporation has long existed in Ohio, the amendment by the last legislature simply extending to such a corporation the right to purchase, sell, lease, mortgage or otherwise encumber its real estate without obtaining an order of court. You will observe that the last sentence of the section, as amended, extends this privilege to corporations formed under and by virtue of that section prior to such amendment. Such corporations may avail themselves of this privilege by the adoption by the original representative

body of an amendment to the original statement of trust which, by operation of law, when filed with the secretary of state, established the trustees as a body corporate.

You specifically inquire whether the corporation mentioned in your letter can obtain the benefits of this provision of the Code. The answer to this question is evident upon the face of your statement to the effect that the corporation in question was organized originally under general corporation laws of the state. In addition to the facts which you set forth, I have examined the articles as filed in your office and am of the opinion that under no possible interpretation could the corporation be considered as having been formed under and by virtue of the provisions of Section 10011 of the Code. The articles are designated as articles of incorporation and lack many of the essentials set forth in Section 10011 prior to its amendment. By the plain terms of the last sentence of that section, therefore, a corporation cannot, by now amending its articles, have the advantage of the right to purchase, sell, lease, mortgage or encumber its property without court order.

The corporation in this instance is styled "The Mission Board of the Church of the Brethren of the Southern District of Ohio" and apparently constitutes a representative body of a religious organization of this state within the meaning of Section 10011 of the Code, although this is a question to be determined finally by the ecclesiastical law applicable to the particular denomination, but, as I have pointed out, the incorporation proceedings were undertaken under the general law and not under the specific authority of Section 10011. This is dispositive of your question and renders unnecessary any consideration of whether any attempted amendment in this respect would constitute a substantial change of purpose. The language of the legislature effectually shows the lack of power of a corporation not for profit organized under general laws to avail itself of the benefits of the section in question.

In passing, I might suggest that the corporations created under authority of Section 10011 of the Code are only those which are authorized by "a presbytery, synod, conference, diocesan convention or other representative body of a religious denomination in this state" or of the United States. All of these terms are, in their general understanding, descriptive of representative bodies of religious denominations and the purpose of the statute is apparently limited to extending the right to these types of representative bodies to incorporate trustees for certain specific endowment funds or property. I can readily conceive that one representative body might properly form several corporations under this section to handle specific endowment funds or trusts. I do not feel, however, that this method of incorporation is available to individual churches which are the constituent parts of the representative body described in the section. There might perhaps be instances in which a single congregation represented the only body of a particular religious denomination and there may perhaps be certain denominations which, from their nature, maintain no control whatsoever over the individual congregation, so that there would be no representative body other than the individual churches. In these instances, corporations under the provisions of Section 10011 of the Code might possibly be formed but this question is not before me and I do not pass upon it.

Respectfully,
EDWARD C. TURNER,
Attorney General.