

provided by law for corporations organized under the general incorporation laws of this state, in so far as the same shall not be inconsistent with the provisions of this act (G. C. §§710-1 to 710-189)."

Section 8623-14, General Code, provides that corporations organized under the provisions of the General Corporation Act may, by amendment, "change the place in this state where the principal office is to be located." The term "articles" is generally stated in Section 8623-2, General Code, to include amended articles and therefore it is my view that when a bank files amended articles with the Secretary of State, the certificate of the Superintendent of Banks must be issued to the Secretary of State before the same may be recorded as provided in the case of original articles of incorporation. Sections 710-44 and 710-46, General Code.

In the event a bank were to seek by amendment to change its principal place of business from one community to a city or village not contiguous, very possibly such an amendment would be inconsistent with Section 710-73, *supra*, particularly in view of the localized nature of banks as hereinabove commented upon. However, you do not inquire as to such matter and no opinion is expressed thereon.

Considering the specific facts which you present and in view of the foregoing discussion relative thereto, it is my opinion that when a bank has a legally established branch in a village contiguous to the village in which its principal place of business is located, such bank may file with the Secretary of State its amended articles of incorporation changing its principal place of business to that of its branch bank, which articles may be recorded by the Secretary of State upon the issuance to him by the Superintendent of Banks of a certificate approving such amendment.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3336.

CRIMINAL LAW—PERSON GUILTY OF MANSLAUGHTER MAY BE
PLACED ON PROBATION.

SYLLABUS:

When a person pleads guilty to or is convicted of the crime of manslaughter, he may be put on probation under authority of the provisions of section 13452-1 of the General Code.

COLUMBUS, OHIO, June 17, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

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

"I direct your attention to sections 13452-1 and 13452-2. The question that I desire your opinion on is whether or not a person pleading guilty to or convicted of manslaughter comes within the exceptions set out in section 13452-2. In other words, my question is whether or not manslaughter comes within the term of 'murder' as the same is used in said section 13452-2 of the General Code. In brief, can one plead

guilty of manslaughter and be put on probation under the provisions of section 13452-1 of the General Code?"

The section of the statute to which you refer, authorizing the judge to place on parole offenders who have either pleaded guilty or been found guilty, is section 13452-1, which reads as follows:

"In prosecutions for crime, except as mentioned in section 6212-17 of the General Code, and as hereinafter provided, where the defendant has pleaded, or been found guilty, and it appears to the satisfaction of the judge or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct and the public good does not demand or require that he be immediately sentenced, such judge or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such judge or magistrate may determine; provided, that juvenile delinquents shall not be included within this provision."

The legislature has provided that persons convicted of certain crimes may not be placed on probation by the enactment of section 13452-2, General Code, which reads:

"No person convicted of murder, arson, burglary of an inhabited dwelling house, incest, sodomy, rape without consent, assault with intent to rape, or administering poison shall have the benefit of probation."

The question you ask turns on whether or not the crime of "manslaughter" may lawfully be classified as "murder."

It is well established that there are no common law crimes against the United States or the State of Ohio. See *United States vs. Warrall* (1798), 2 Dallas, 384; *United States vs. Britton, et al.*, 108 U. S., 199, 206; *Whiteman vs. State*, 119 O. S., 285, at p. 289. We must therefore look to the phrasology of the statutes of Ohio to determine whether or not the crime of manslaughter is "murder."

As to the crime of manslaughter, section 12404, General Code, reads:

"Whoever unlawfully kills another, except in the manner described in the next four preceding sections, is guilty of manslaughter, and shall be imprisoned in the penitentiary not less than one year nor more than twenty years."

In Ohio the courts in defining "manslaughter" have adopted the definition given in 4 Blackstone's Commentaries, 191, which reads:

" * * * the unlawful killing of another without malice either express or implied; which may be either voluntarily, upon a sudden heat; or involuntarily, but in the commission of some unlawful act." See *Black vs. State of Ohio*, 103 O. S., 436.

It will be noted from the provisions of section 12404, General Code, supra, that one who unlawfully kills another except in the manner prescribed in the four preceding sections, is guilty of manslaughter, and upon conviction shall be imprisoned in the penitentiary not less than one year nor more than twenty years.

By the provisions of sections 12400, 12401, 12402 and 12402-1, General Code, it is severally provided that upon conviction for a violation thereof such person

shall be guilty of murder in the first degree, and shall be punished as therein provided. Section 12403, General Code, then provides:

“Whoever, purposely and maliciously kills another, except in the manner described in the next three preceding sections, is guilty of murder in the second degree and shall be imprisoned in the penitentiary during life.”

Manifestly the provisions of sections 12400 to 12404, inclusive, divide “homicide” into three classes, viz., murder in the first degree, murder in the second degree, and manslaughter. Therefore, a person convicted of either of the first two grades stands convicted of murder; and one convicted of the third grade, manslaughter, is not convicted of murder.

It will be noted that the crime of manslaughter is not mentioned in section 13452-2, General Code.

Therefore, in specific answer to your question, it follows that where a person pleads guilty to or is convicted of the crime of manslaughter, he may be put on probation under authority of the provisions of section 13452-1, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3337.

EMBALMING LAW—NUMBER AND PLACE OF MEETINGS EACH YEAR OF EXAMINING BOARD—FIRST REQUIREMENT OF PERSON DESIRING TO ENGAGE IN PRACTICE—PRACTICAL EXPERIENCE MAY PRECEDE APPLICATION FOR REGISTRATION—FILING OF APPLICATION FOR LICENSE.

SYLLABUS:

1. *Under the provisions of Sections 1338 and 1342, General Code, the state board of embalming examiners of Ohio is required to hold two meetings each year for the examination of applicants for license at such time as the board may direct, one of which shall be held in Columbus and the other of which shall be held either at Columbus or such other place as the board may direct.*

2. *The first thing that a person must do to become engaged in the practice of embalming as a licensed embalmer in this state is file an application for registration, which application must be filed at least thirty days before the date of the examination of the applicant.*

3. *Such person may enter upon the service of the two years of practical experience provided by law before filing his application for registration.*

4. *Section 1342, General Code, contains no provision as to the time that must elapse between the time of filing application for registration and the time of making application for license, but only requires that the filing of the application for registration precede the filing of the application for license.*

5. *Apprenticeship may be legally certified without the applicant first making application for registration.*