

Second, a board of education is not authorized by Section 7692, General Code, to employ a trained nurse to aid in the physical examination and diagnosis of children, teachers and janitors in the schools of the district, unless the board employs a physician or dentist to make those examinations and diagnoses.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3007.

APPROVAL, BONDS OF SHARON TOWNSHIP RURAL SCHOOL DISTRICT, NOBLE COUNTY, OHIO—\$5,500.00.

COLUMBUS, OHIO, February 28, 1931.

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

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3008.

DISAPPROVAL, ARTICLES OF INCORPORATION OF RABBIT OWNERS MUTUAL PROTECTIVE ASSOCIATION.

COLUMBUS, OHIO, February 28, 1931.

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

DEAR SIR:—I beg to acknowledge receipt of your recent communication, together with proposed "Articles of Incorporation of Rabbit Owners Mutual Protective Association." It is apparent that the proposed association is being formed under the authority of Title IX, Division III, Subdivision II, Chapter 2 of the General Code, containing Sections 9593 to 9607, inclusive. I am unable to find any specific statutory authority requiring my approval of a certificate of incorporation of such an association. See my opinion No. 2859, rendered to you January 24, 1931. However, I interpret your communication as a request for my opinion as to the legality of said proposed certificate of incorporation.

Excluding the signatures and acknowledgment, said proposed certificate of incorporation reads 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: RABBIT OWNERS MUTUAL PROTECTIVE ASSOCIATION.

SECOND. The place in Ohio where its principal office is to be located is Toledo, Lucas County, Ohio.

THIRD. The purpose or purposes for which it is formed are: for soliciting applications for and issuing policies or certificates of membership granting protection against loss by fire, theft, tornado, lightning, hail, gas explosion, transportation and death of rabbits belonging to members of the Association for an indefinite period for all above mentioned risks except death, which shall cover for a period on each animal in-

sured from six (6) months of age to thirty-six (36) months of age, and all animals specifically endorsed from six (6) months of age until disposal thereof on all other risks. To protect members of this Association for fire, tornado, lightning, on their buildings and their contents, including household goods and furniture."

The document of incorporation should be captioned "certificate" rather than "articles." See Section 9594, General Code; Opinion of Attorney General No. 2859, dated January 24, 1931.

The declaration in the proposed certificate that the incorporators desire "to form a corporation not for profit under the General Corporation Act of Ohio" is erroneous inasmuch as the authority for organizing a corporation to carry out the purposes set forth in said proposed certificate is contained in Sections 9593, et seq. of the General Code. Section 8623-132, General Code; *State v. The Pioneer Live Stock Co.*, 38 O. S. 347. As I have suggested in several opinions, where corporations are formed under special acts, it is good practice to specify in the proposed certificate or articles the specific sections of the General Code from which the association or corporation derives its authority. Vol. I, Opinions of the Attorney General, 1919, p. 18.

The proposed certificate of incorporation is further defective in the following respects:

1. The certificate contains no statement that the incorporators are of lawful age, are residents of Ohio or of an adjoining state, or that they own insurable property in Ohio. Opinions of the Attorney General for 1910-1911, p. 210; Vol. I, Opinions of Attorney General for 1919, p. 18.

2. One of the stated purposes is to insure against loss in "transportation." There is no authority in the sections of the General Code cited, supra, under which this association is proposed to be organized to indemnify against mishaps under this category. Vol. I, Opinions of Attorney General for 1914, p. 835. Nor against theft, which is one of the purposes of the association stated in said proposed certificate. Vol. I, Opinions of the Attorney General for 1913, p. 88; Vol. I, Opinions of the Attorney General for 1914, p. 835, 965; Vol. II, Opinions of the Attorney General for 1914, p. 1679.

3. Said proposed certificate does not limit the property to be insured to such as is located in the State of Ohio as required by Section 9593, General Code. Vol. I, Opinions of the Attorney General for 1914, p. 835, 965; Vol. I, Opinions of the Attorney General for 1919, p. 18.

4. Said certificate provides for "granting protection against loss by fire \* \* \*" etc., "and death of rabbits belonging to members of the association for an indefinite period for all above mentioned risks except death." In connection with the matter which follows it is probable that the incorporators intended to limit the insurance against death of any animal to death occurring between certain ages. However, the phraseology is not free from the charge of ambiguity. This should be cured by an unambiguous expression of a purpose to insure against death from any of the casualties specified in Section 9593, supra. The limitation as to age, of course, is entirely valid.

5. It is provided as one of the purposes in said certificate to insure "all animals specifically endorsed from six (6) months of age until disposal thereof on all other risks." It is held in Vol. II, Opinions of the Attorney General for 1930, p. 1013, in the first branch of the syllabus:

"Mutual protective associations incorporated under authority of sec-

tions 9593 et seq. G. C. are not empowered to insure property generally, but may only insure the property therein authorized."

It is clear that the purposes of said association only include the insurance of the risks specified in Section 9593, General Code, against loss solely resulting from the contingencies as set forth in said section of the General Code. It is provided in Section 9594, subsection 3, in part that "The kinds of property proposed to be insured and the casualties specified in such preceding section proposed to be insured against, also must be specified in such certificate."

6. The names of R. G. Gallemore and E. L. Couzens, as signed and as are written in the acknowledgment of said proposed certificate, do not correspond as will be clearly apparent upon inspection. The notary public taking the acknowledgment should make the necessary correction therein. Vol. I, Opinions of the Attorney General for 1919, p. 18.

7. It should further be observed that the proposed certificate of incorporation does not provide that it shall be one of the purposes of said association to enforce any contract entered into by the association, whereby the members agree to be assessed specifically for incidental purposes and for the payment of losses occurring to such members as required by Section 9594, subsection 3 of the General Code. Opinions of Attorney General, Vol. I, 1912, p. 19; Vol. I, 1914, p. 965; Vol. II, 1914, p. 1679; Vol. I, 1915, p. 904; Vol. II, 1920, p. 1013.

I accordingly advise that you should not file the proposed certificate of incorporation until corrections are made as above suggested.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3009.

APPROVAL, BONDS OF MARSHALL TOWNSHIP RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, February 28, 1931.

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

3010.

SPECIAL ELECTION—APPOINTMENT OF JUDGES AND CLERKS IN VARIOUS PRECINCTS—BOARD OF ELECTIONS WITHOUT AUTHORITY TO MAKE SUCH APPOINTMENTS WITHOUT COMPENSATION.

**SYLLABUS:**

*A board of elections is not authorized to appoint judges and clerks of elections to serve for a specific election without compensation.*