

2859.

DISAPPROVAL, ARTICLES OF INCORPORATION OF THE GROWERS
MUTUAL INSURANCE ASSOCIATION.

COLUMBUS, OHIO, January 24, 1931.

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

DEAR SIR:—I return herewith, unapproved, the proposed articles of incorporation of The Growers Mutual Insurance Association which you submitted for my examination with your communication of recent date.

It seems clear that the proposed association is organized under the authority of Title IX, Div. III, Subdiv. II, Chapter 2 of the General Code, containing Sections 9593 to 9607, inclusive, and the specific authority for my approval of said proposed articles of incorporation must be found therein. Section 9594 provides that the Attorney General shall approve an amendment to the certificate of incorporation of such an association duly made for certain purposes. I find nowhere in said chapter of the General Code specific authority requiring the Attorney General to approve the original proposed certificate. In the absence of such statutory authority, it may be seriously questioned whether such authority exists. However, interpreting your request as one for my official opinion as to the validity of said proposed articles of incorporation, I am setting forth herein the results of my examination.

The pertinent part of the body of said proposed articles of incorporation reads as follows:

"CORPORATION NOT FOR PROFIT
THESE ARTICLES OF INCORPORATION
OF
THE GROWERS MUTUAL INSURANCE ASSOCIATION

WITNESSETH, That we, the undersigned all of whom are citizens of the state of Ohio, desiring to form a corporation, not for profit, under Sections 9593 to 9607 inclusive of the laws of said State, do hereby certify:

FIRST. The name of said corporation shall be THE GROWERS MUTUAL INSURANCE ASSOCIATION.

SECOND. Said corporation is to be located at Cleveland, in Cuyahoga County, Ohio, and its principal business there transacted.

THIRD. Said corporation is formed for the purpose of soliciting insurance by written and signed application applying for same, and issuing policies or certificates of membership granting insurance against loss or damage, or partial loss and damage, by fire, tornado, cyclone, wind storms or hail, describing the real or personal property to be insured, and limited to such as farm buildings, detached dwellings, school houses, churches, township buildings, grange buildings, greenhouses and hot house buildings and farm implements, farm products, live stock, household goods, furniture, pleasure and utility vehicles, motor tractors, electric motors, electrical appliances, lighting systems, and against hail only on growing crops, such as *usuly* grown by farmers, gardeners, nurserymen, florists and market gardeners, all of said *property* to be located in the state of Ohio and within or without the limits of any municipality. Provided, that the membership in this association be restricted to insurance upon property herein specified.

All persons or firms applying for and receiving insurance or membership in this association *specifically* agree in their application for such insurance to pay or cause to be paid all membership fees and assessments provided for in the by-laws of the association or levied by an order of the board of directors of this association against all members, policies or certificates of membership for the payment of incidental purposes and the payment of losses which may occur to the members of this association, and to provide for surplus funds as provided in Section (a), Nos. 9593 to 9607 inclusive of Page and Adams Annotated Ohio General Code."

Section 9594, General Code, provides in part, relating to the duty of the incorporators:

"Such persons shall make and subscribe a certificate setting forth therein:

1. The name by which the association is to be known.
2. The place which shall be regarded as its center or business office.
3. The object of the association, which shall only be one or more of the objects set forth in the preceding section, and to enforce any contract by them entered into whereby the parties thereto agree to be assessed specifically for incidental purposes and for the payment of losses which occur to its members. 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. * * * ."

Section 9595, General Code, provides:

"The certificate shall be filed in the office of the secretary of state. A copy thereof, duly certified by him shall be evidence of the existence and due incorporation of the association for the purposes therein named."

In view of these sections, it seems clear that the designation of the document for incorporation submitted as articles of incorporation is erroneous.

Section 8623-132, General Code, provides:

"When special provision is made in the General Code for the incorporation, organization, conduct or government of corporations formed for any specified purpose, this act shall not apply, but the special provision shall govern unless it clearly appears that the special provision is cumulative.
* * * * *

In the caption of the so-called articles of incorporation, said association is referred to as a corporation not for profit and in the first paragraph of the body thereof it is stated that the incorporators desire to form a corporation not for profit. The organization of corporations not for profit is governed by Section 8623-97 and related sections. There is nothing in Title IX, Div. III, Subdiv. II, Chapter 2, supra, under which this association is proposed to be formed showing that the provisions of the General Code therein contained are cumulative. It is, therefore, obviously incorrect to make the inferential references in the proposed document of incorporation to the statutes of Ohio not contained in the above cited chapter relating to corporations not for profit.

In Vol. I, Opinions of the Attorney General for 1919, at p. 21, the then Attorney General said:

"I also suggest in this connection that if reference is desired to be made in the articles to the Ohio law or statutes under which the subscribers are associating together, the misleading or erroneous statement that they are forming a corporation 'under the general corporation laws of said state,' should not be used, but instead, a statement to the effect that they are associating themselves together as a mutual protective association under authority of Sections 9593 et seq. G. C., should be employed."

Section 9593, General Code, provides in part as follows:

"Any number of persons of lawful age, not less than ten in number, residents of this state, or an adjoining state and owning insurable property in this state, may associate themselves together for the purpose of insuring
* * * *"

It will be noted that in the document of incorporation of The Growers Mutual Insurance Association, the incorporators failed to state that they are persons of lawful age or that they own insurable property in this state. It is held in the above cited opinion of the Attorney General at p. 18 in the first branch of the syllabus:

"The articles of incorporation of a mutual protective association organized under authority of Section 9593 et seq. General Code, must disclose that all of the incorporators possess the qualifications prescribed by those sections, viz.: that they are 'persons of lawful age,' and are 'residents of this state, or an adjoining state and owning insurable property in this state.'"

It was said by the then Attorney General in that opinion at pp. 20, 21:

"The recitals in any proposed articles should be such as to clearly disclose that the subscribers possess the qualifications required by Section 9593, namely, that they are of lawful age, residents of this state, or an adjoining state and owning insurable property in this state. 3 Op. Atty. Gen. 530; in re Mulholland Benevolent society, 10 Phila. 19; in re Enterprise Mutual Beneficial Association, 10 Phila. 380; in re St. Ladislaus association 128 N. Y. S. 561. See also, *Baltzel vs. Church*, 110 Md. 244, 261; *Boatsmen's Bank vs. Gillespie*, 209 Mo. 217.

There is also judicial expression to the effect that when the statute confers authority to incorporate upon persons possessing certain qualifications, such as citizenship or residence, it is the duty of the secretary of state to inquire into the question, and that when the duty is imposed upon an officer to pass upon the sufficiency of an application for articles of incorporation, such officer should require strict compliance with the conditions as to residence, etc., of the incorporators. See 1 Thompson, Corporations, Section 177."

You will note from Section 9594, subsection 3, General Code in the portion quoted, that it is required that one of the objects of the association which shall be set forth in the certificate shall be to enforce "any contract by them entered into whereby the parties agree to be assessed specifically", etc. I find no such purpose or its sufficient equivalent in the so-called articles of incorporation being herein considered. This is necessary in order that any certificate of incorporation of such an association comply with law. See Vol. II, Opinions of Attorney General for 1920, p. 1013; Vol. I, 1915, p. 904; Vol. II, 1914, p. 1679; Vol. I, 1912, p. 20.

I have indicated by italicizing the same certain typographical errors appearing

in said document of incorporation which, of course, should be corrected.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2860.

TAXATION—LANDS PURCHASED BY GUARDIAN WITH FUNDS DERIVED SOLELY FROM UNITED STATES VETERANS' BUREAU—SUCH LAND TAX EXEMPT UNTIL TERMINATION OF GUARDIANSHIP.

SYLLABUS:

Lands purchased with funds derived solely from the United States Veterans Bureau and paid the guardians of veterans bureau beneficiaries under the World War Veterans Act are not taxable until the termination of said guardianship.

COLUMBUS, OHIO, January 26, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion as to whether or not real estate purchased with funds derived solely from the United States Veterans Bureau and paid to guardians of Veterans Bureau beneficiaries under the World War Veterans Act is taxable in this State.

In your communication you suggest that you are presenting this inquiry in pursuance of a communication to you from Mr. W. L. Metzger, Regional Attorney for the United States Veterans Bureau, a copy of which you enclose. Mr. Metzger's letter reads in part:

"Referring to our conversation of the morning of December 4, 1930. I have the honor of requesting your assistance in deciding a question which concerns taxation of real estate, purchased with funds derived solely from the United States Veterans' Bureau and paid to guardians of Veterans' Bureau beneficiaries under the World War Veterans' Act. The question of taxation of such funds has heretofore received the attention of the Attorney General of the State of Ohio and has been partially decided in his opinion No. 3007 dated December 10, 1928, amplified by an opinion dated February 26, 1929, and No. 1018 dated October 11, 1929. The questions therein decided are based upon the provisions of Section 22 of the World War Veterans' Act as follows:

"That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, or IV; and shall be exempt from all taxation * * *."

In the Attorney General's opinion dated December 10, 1928 he decided in substance as follows:

'(1) The compensation, insurance and support allowance, received by virtue of the World War Veterans' Act of 1924, are exempt from taxation under the provisions of Section 22 of said Act, (38 U. S. C. A., Section 454), as long as said funds are in their original form, in the hands of the beneficiary, or on deposit to his credit.'