

"The question is whether positions in the State Library shall be created by official action of the Board, or, by the Librarian?"

Section 154-53, General Code, in so far as pertinent to your inquiry, is as follows:

"It (state library board) shall organize the library service of the state into departments and determine the number of assistants and other employes therein."

Section 154-54 provides in part as follows:

"Under the direction and supervision of the state library board and subject to the rules and regulations established by it, the state librarian shall, through such departments as may be created by the board, exercise all powers and perform all duties vested by law in the state board of library commissioners."

It is apparent that by virtue of sections 154-53 and 154-54 the state library board has the sole power of creating the various departments in the library service of the state of Ohio and that the said board also is empowered to create positions in the various departments created by the board. These two sections, when read together, provide that the state board of library commissioners shall organize the library service of the state of Ohio into departments and, that said departments may be created by the board at its discretion; that after the department or departments have been created by the board of library commissioners said board shall determine the number of assistants and other employes therein.

It is therefore my opinion that by virtue of sections 154-53 and 154-54 of the General Code, the state board of library commissioners has the sole power to determine and create positions in the various departments of the library service of the state of Ohio.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3095.

DISAPPROVAL; ARTICLES OF INCORPORATION OF EMPIRE MUTUAL
INSURANCE ASSOCIATION.

COLUMBUS, OHIO, March 26, 1931.

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

DEAR SIR:—You have submitted for my examination and approval proposed articles of incorporation of Empire Mutual Insurance Association. The body of said proposed articles reads:

"WITNESSETH, That we, the undersigned, a majority of whom are citizens of the State of Ohio, desiring to form a corporation, not for profit, under the General Corporation Laws of said State, do hereby certify:

FIRST: The name of said corporation shall be Empire Mutual Insurance Association.

SECOND: Said corporation shall be located at Cleveland in Cuyahoga County, Ohio, and its business there transacted.

THIRD: Said corporation is formed for the purpose of insuring,

transacting and making insurance, re-insuring and accepting re-insurance and protecting its members against risks as follows:

(a) Liability Insurance. Against loss, expense or liability by risk of bodily injury or death by accident, disability, sickness or disease suffered by others for which the insured may be liable or have assumed liability not including workmen's compensation.

(b) Disability Insurance: Against bodily injury or death by accident and disability by sickness.

(c) Automobile Insurance: Against expense and liability resulting from the ownership, *maintainance*, or use of any automobile or other vehicle.

Said insurance shall be on the mutual plan as authorized and regulated by the laws of the State of Ohio relating to mutual companies transacting said insurance business and the company shall have all the powers necessary and incident to carrying on said insurance upon said plan."

As has been consistently held by my honorable predecessors, and myself, based on the rule laid down by the Supreme Court of Ohio in the case of *State v. The Pioneer Live Stock Co.*, 38 O. S. 347, now embodied in substance in Section 8623-132, General Code, a corporation organized to transact the business of insurance cannot be formed under the General Corporation Laws of Ohio. The statement that the proposed corporation is intended to be formed under said laws as a corporation not for profit is therefore improper. See Opinions of the Attorney General for 1930, Nos. 3008, 2859, 2834 and 2813 and opinions of my predecessors cited therein.

It is apparent from the phrasology used in the purpose clause of said proposed articles of incorporation that said company is being formed under the provisions of Title IX, Division III, Subdivision II, Chapter 2-1 of the General Code (Sections 9607-1 to 9635, inclusive). I suggest that it is desirable for purposes of certainty, that in substitution for the erroneous and objectionable reference contained in said proposed articles referred to above, there be written therein a specific designation of the special provisions of the General Code which will be the source of the authority for said corporation's existence and powers. See Vol. I, Opinions of the Attorney General for 1919, p. 18, fourth branch of the syllabus.

Subdivision (c) of the purpose clause of the proposed articles of incorporation paraphrases, in part, the provisions of Section 9607-2, General Code, subsection 4. However, the proviso contained in said subsection of Section 9607-2, General Code, prohibiting the issuance of a policy against the hazard of destruction or damage to automobiles by fire alone, is omitted from subdivision (c) of said proposed purpose clause and is therefore, to that extent, defective. See Vol. II, Opinions of the Attorney General for 1917, p. 1246. I note that the word "loss" appearing in the correlative subsection of the statute referred to is omitted from subsection (c) of said proposed purpose clause. While this omission has no bearing on the validity of said purpose clause the insertion of this word in connection with the term "expense" and "liability" now used therein, would seem to serve a most useful purpose in further clarifying this clause.

For the reasons stated herein I am unable to approve said proposed articles of incorporation in their present form and return them herewith for correction in conformity to law.

Respectfully,

GILBERT BETTMAN,

Attorney General.