

3775.

APPROVAL, ARTICLES OF INCORPORATION OF THE MID-CONTINENT MUTUAL INDEMNITY COMPANY.

COLUMBUS, OHIO, November 18, 1931.

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

DEAR SIR:—You have submitted for my examination and approval the revised articles of incorporation of THE MID-CONTINENT MUTUAL INDEMNITY COMPANY. I find that the same are not inconsistent with the Constitution and laws of this State and of the United States. Accordingly, I am returning said proposed articles of incorporation with my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3776.

APPROVAL, BONDS OF SUMMIT COUNTY, OHIO—\$94,000.00.

COLUMBUS, OHIO, November 19, 1931.

Industrial Commission of Ohio, Columbus, Ohio.

3777.

APPROVAL, NOTES OF HAMILTON COUNTY, OHIO—\$360,000.00.

COLUMBUS, OHIO, November 19, 1931.

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

3778.

GENERAL APPROPRIATION ACT—AGRICULTURAL EXPERIMENT STATION—UNAUTHORIZED TO EXPEND MONEY FOR PURCHASE OF LAND.

SYLLABUS:

The Ohio Agricultural Experiment Station may not use money appropriated to it by House Bill No. 624, under the heading Maintenance F-9, (experimental work for special vegetable crops) for the purchase of land to be used for experimental work with special vegetable crops.

COLUMBUS, OHIO, November 21, 1931.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent inquiry which reads as follows:

“The Eighty-Ninth General Assembly in H. B. No. 624, made the following appropriation to the Ohio Agricultural Experiment Station.

<i>Maintenance</i>	<i>1931</i>	<i>1932</i>
F-9 Experimental Work for Special Vegetable Crops	\$15,390.00	\$14,580.00

Application has been made to the Controlling Board by the Ohio Agricultural Experiment Station, in accordance with Section 8, of H. B. No. 624, for the release of \$3,000.00 of the above appropriation for the purchase of ten (10) acres of land in Hardin County to be used in experimental work with special vegetable crops.

I have been directed by resolution of the Controlling Board to ask your department for a written opinion as to whether any portion of the above appropriation can be used for the purchase of land.”

The question raised in your communication is whether or not the purchase of land may be made from an appropriation for maintenance purposes. This question has been before the Attorney General at least on one occasion. In an opinion reported in *Opinions of Attorney General for 1929, Volume III, page 1971*, it was held in the syllabus:

“Under the present appropriation bill there is no authority whereby the Department of Public Works can make an expenditure for the purchase of land for road purposes.”

The facts in the above opinion disclosed that the Controlling Board had released four hundred dollars (\$400.00) from the maintenance appropriation of the Department of Public Works for the purchase of land near Buckeye Lake.

The Department of Public Works then requested the Finance Department to allot the funds in order to make said funds available for the expenditure. From this situation the question arose as to whether or not an expenditure for the purchase of land could be made from an appropriation for maintenance purposes. As the syllabus indicates it was held that an appropriation for maintenance could not be used for the purchase of land.

In the opinion it is stated on page 1971:

“In considering your inquiry, it should be noted that Section 22 of Article II of the Ohio Constitution provides no money shall be drawn from the public treasury except in pursuance of specific appropriation. Since the adoption of the above constitutional provision in 1851, it has been the established policy of the Legislature to specify in more or less definite terms the purposes for which a given appropriation is to be used. That is to say, the Legislature has uniformly followed the policy of definitely appropriating money for salaries, maintenance and additions and

betterments, and frequently has definitely specified as a subdivision of additions and betterments "lands." While it is admitted that it is unnecessary for the Legislature to make a detailed appropriation, yet when it does make a detailed appropriation, it is conceded that that detail must be followed in making the expenditure.

In examining the appropriation acts of the 88th General Assembly as suggested in your inquiry, there appears to be no specific appropriation for the purchase of land by the Department of Public Works."

The same situation exists in this instance. An examination of House Bill No. 624 of the 89th General Assembly discloses that while the Legislature made appropriations under the heading "additions and betterments" to the Ohio Agricultural Experiment Station (pages 135 and 137 of House Bill No. 624), no item for the purchase of land appears therein. It may be noted that the Legislature in said House Bill No. 624 in a number of instances appropriated money for the purchase of "land" which is indicative of the fact that when it intended money therein appropriated to be used for such purposes it expressly so stated. See pages 62, 71, 161 and 162 of House Bill No. 624 where appropriations are made for the purchase of land under G-1, Additions and Betterments to the Bureau of Fish Propagation, Bureau of Inland Lakes and Parks and Ohio State Archaeological Society.

Under Section 4 of House Bill No. 624 the Controlling Board is granted authority among other things:

"(a) To grant authority to any department, institution, office or other agency or body for which an appropriation is made in Section 1 of this act, to expend the moneys appropriated otherwise than in accordance with the items set forth, and for such purpose to authorize transfers of funds within a department, division or agency for which appropriations are made, from any item to another within 'Personal Service,' 'Maintenance' or 'Additions and Betterments,' also to authorize transfers of funds from items entitled 'Personal Service' to items entitled 'Maintenance,' or vice versa. However, the Controlling Board may, if it deems advisable, delegate to the Director of Finance authority to approve transfers of funds from any item to another within 'Personal Service' or 'Maintenance' during such period or periods as it might determine."

* * * * *

"(e) To release from any funds appropriated for the maintenance of such controlling board to any department, board, institution, or other agency of the state such amounts for personal service, maintenance, equipment, and/or additions and betterments for such agency as may be shown to the satisfaction of such controlling board to be necessary or expedient."

It is believed that there is no authority in the above language or any other provision of House Bill No. 624 which authorizes the Controlling Board to transfer moneys from any item in maintenance to an item in additions and betterments. Of course under (e) of Section 4 the Controlling Board is authorized to release from any funds appropriated for the maintenance of such board to the Ohio Agricultural Experiment Station such amounts for additions and better-

ments as may be shown to satisfaction of such board to be necessary or expedient.

In view of the foregoing, I am of the opinion that no portion of the appropriation designated under Maintenance F-9 to the Ohio Agricultural Experiment Station can be used for the purchase of land.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3779.

NEWSPAPER—DAILY REPORTER, COLUMBUS—NEWSPAPER OF GENERAL CIRCULATION—ELIGIBLE TO PUBLISH APPLICATION FOR PAROLE.

SYLLABUS:

The Daily Reporter, of Columbus, Ohio, is a newspaper of general circulation in Franklin County, Ohio, and is therefore eligible to print notices of applications for parole of prisoners under the terms of Section 2211-8, General Code.

COLUMBUS, OHIO, November 21, 1931.

HON. WM. H. DORE, *Secretary, Ohio Board of Parole, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“The Ohio Board of Parole has instructed me to ask you for a formal opinion at the earliest possible moment concerning the following question:

Under General Code Section 2211-8, a part of the section reads as follows: ‘The said notice shall also be published once each week for two consecutive weeks in a newspaper published and of *general circulation in said county.*’

For your information I will say that under the old law the words *general circulation* did not appear and also wish to say that under the old law many of the legal notices were carried in the papers in respective counties that had to do with legal notices. The Board is particularly interested in the status under the new law of the Daily Reporter published at Columbus, Ohio, which is listed as a daily law journal and daily legal news, also listed as a newspaper devoted to law, real estate, finance and general intelligence.

The Board upon coming into office find that some of the cases especially from Franklin County were advertised in the Daily Reporter, and being desirous of fully complying with the law the Board would appreciate very much if you would give us a formal opinion *as soon as possible* as to whether or not the Daily Reporter, published in Columbus, Ohio, does conform to the law as regards a paper in general circulation as required in General Code Section 2211-8, as referred to above.

The Board again repeats that on account of the great number of cases being advertised at the respective penal institutions that it is of