

“Such bank may with the consent of the Superintendent of Banks, resume business upon such conditions as may be approved by the Court of Common Pleas in and for the county in which such bank is located. * * *”

From this provision of the statute, it is apparent that the conditions under which a bank in the process of liquidation may resume business are subject to the approval of the Common Pleas Court of the proper county after your consent to such conditions has been secured. The statute does not provide for the approval of this office to such conditions, and it would be highly improper for this office to attempt to formally approve or disapprove the proposed reopening plan which has been submitted to you by the reopening committee of The Ohio Savings Bank & Trust Company.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1754.

INTERPRETATION OF AMBIGUOUS STATUTES DISCUSSED—BUILDING AND LOAN ASSOCIATION—CERTIFICATES OF AMENDMENT TO ARTICLES OF INCORPORATION OR OF DISSOLUTION MUST BE APPROVED BY SUPERINTENDENT OF BUILDING AND LOAN ASSOCIATIONS BEFORE FILING WITH SECRETARY OF STATE.

SYLLABUS:

1. *When the practice of a department in which the administration of a state law has been placed, is uniform and long continuing, and the meaning of the statute, upon examination, is found to be ambiguous or doubtful, such interpretation can not be disturbed unless it can not be reconciled with the language of the statute.*
2. *In view of the uniform and long continued practice of the department and the ambiguity contained in Sections 9643 and 9643-3, General Code, the Secretary of State may not file in his office certificates of amendment to the articles of incorporation of a building and loan association or of dissolution of such association until such certificates shall have been first submitted to, and approved by the Superintendent of Building and Loan Associations of Ohio.*

COLUMBUS, OHIO, Oct. 23, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“Section 9643 of the General Code of Ohio in part, is as follows:

* * Upon receipt of Articles of Incorporation and all papers relating thereto, the Secretary of State shall forthwith transmit to the Superintendent of Building and Loan Associations a copy thereof and shall not record such Articles of Incorporation until duly authorized to do

so by the Superintendent of Building and Loan Associations as herein provided.'

For a great number of years this department, in cooperation with the Department of Building and Loan Associations, has submitted for approval by the Superintendent of Building and Loan Associations all certificates, such as certificates of amendment, certificates of reduction of stated capital, certificates of dissolution, and all other certificates required to be filed in this department by the General Corporation Act, before filing same on our records.

In the past few weeks numerous objections have been raised by representatives of building and loan associations regarding the submission for approval of the above mentioned certificates before accepting same for filing in this department.

Your opinion is requested as to whether or not it is necessary for the Secretary of State to submit for approval any of the above certificates before same are filed in this department."

A somewhat similar request to that presented by you, was before my predecessor in office, concerning the approval of the Attorney General to the articles of incorporation of insurance companies. While the statute does not require the Attorney General to approve the articles of incorporation of a building and loan association it does require such approval to be made by another administrative officer, namely, the Superintendent of Building and Loan Associations. In answer to such request to my predecessor, an opinion was rendered, and is reported in Opinions of the Attorney General for 1932, Vol. 1, page 5, the syllabus of which opinion reads:

"Where the provisions of the General Code require the approval of the Attorney General of articles of incorporation of insurance companies, a like approval must be endorsed on all amendments thereto."

I do not believe that the difference in the provisions of the statute as to which of two administrative officers were required to approve the articles before filing would have made any difference in the opinion of my predecessor.

It would appear from the language contained in Section 9643, General Code, referred to in your inquiry, that the legislature must have had some purpose in requiring the articles of incorporation of a building and loan association to be submitted to the superintendent of building and loan associations for his approval before permitting them to be filed by the Secretary of State. From the nature of such provision, it would appear that the legislature sought to correct some evil which theretofore existed with reference to articles of incorporation of building and loan associations or to prevent the growth of some practice which they thought might arise concerning provisions to be contained in articles of incorporation which might be filed for the purpose of creating a building and loan company.

It is a fundamental rule of statutory interpretation, that the purpose of the legislature in the enactment of a statute can not be ignored. (See *Cleveland Trust Company vs. Hickox*, 32 O. App. 69; *Cochrel vs. Robinson*, 113 O. S. 526) It might be urged that "articles of incorporation", as used in Section 9643, General Code, refers only to those documents which, when filed with the Secretary of State, give rise to the birth of the corporation. It might likewise be urged that "articles of incorporation" refers to any document affecting what is commonly referred to as the charter of the corporation. In the General Corporation Act the

legislature has defined the term "articles". In Section 8623-2, General Code, the legislative definition for the purposes of the General Corporation Act, is as follows:

"The term 'articles' shall include the articles of incorporation, amendments thereto, agreements of consolidation, certificates of reorganization or amended articles, and all certificates heretofore or hereafter required or permitted to be filed in the office of the secretary of state."

The average business man when asked about the provisions of the articles of incorporation or charter of the corporation in which he is interested, will refer to the articles of incorporation as amended and existing at the time of the inquiry. It is a general rule of interpretation of statutes that common or ordinary words appearing in the statute will be given their common or ordinarily accepted meaning unless the context of the statute requires a different meaning. (See 2 Lewis Sutherland Statutory Construction, Sec. 389; *Smith vs. Buck*, 119 O. S. 101, 105; *Wolford Realty Company, Inc. vs. Rose*, 286 U. S. 319.

Section 8623-4, General Code, construed in conjunction with the Building and Loan Act (Sec. 9643 et seq.) specifies the contents of the articles of incorporation of a building and loan company. It provides that such articles must set forth:

1. The name of the corporation.
2. The place in this state where the principal office of the corporation is to be located.
3. The purposes for which it is organized.
4. The authorized capital stock. (Sec. 9645, G. C.)

The statutes further authorize the amendment of the articles of incorporation after they are filed with the Secretary of State (Secs. 8623-14, 8623-15 and 9669, G. C.) Pursuant to the provisions of these sections almost any item contained in the original articles of incorporation may be amended, altered or changed. It is conceivable that from time to time the corporation might amend its articles of incorporation to such extent that no part of the original articles were in effect, not even the name, yet the corporation would continue to exist and would have had a continuing existence since the filing of the original articles. If such alterations were to be permitted by amendment to the articles of incorporation without the submission of such amendments to the Superintendent of Building and Loan Associations the entire purpose of the legislature in causing such articles of incorporation to be referred to the Superintendent of Building and Loan Associations for his approval, would be defeated. Thus, if it were the desire of the incorporators to defeat this provision of the statute it might well be that they would file articles of incorporation which they well knew would receive the approval of the Superintendent of Building and Loan Associations and immediately after such filing, proceed to amend such articles by the insertion of provisions therein which they were certain that the Superintendent would not approve and thereafter continue to operate as a building and loan association under articles of incorporation or a charter which was not the charter approved by the Superintendent of Building and Loan Associations. The provisions of Section 9643, General Code, standing alone, do not clearly and definitely set forth whether the legislative intent was to use the words "articles of incorporation" in their most restricted meaning or in the somewhat broader meaning, including the amendments thereto. Section 9643-3, General Code, renders even more ambiguous the provisions contained in Section 9643, General Code, above referred to. Such language is:

"Associations may be organized and conducted under the general laws of Ohio relating to corporations, except as otherwise provided in this chapter; but, upon receipt of articles of incorporation and all papers relating thereto, the secretary of state shall forthwith transmit to the superintendent of building and loan associations a copy thereof and shall not record such articles of incorporation until duly authorized to do so by the superintendent of building and loan associations as hereafter provided."

An ambiguity has been defined by Marshall, Chief Justice, in the case of *Caldwell vs. State*, 115 O. S. 458, at 460, as follows:

"An ambiguity is defined as doubtfulness or uncertainty; language which is open to various interpretations or having a double meaning; language which is obscure or equivocal."

Since there is an ambiguity in the language of these sections it would appear that the construction placed thereon if uniform and continuing for a long period of time if it exists, should control, for the courts have repeatedly held that when the language of the statute is ambiguous or lacking in clarity and the administrative officers charged with enforcement have placed a uniform construction on its terms over a period of time courts should be quite loath to set aside such uniform construction unless it clearly is in conflict with the language of the statute even though the court itself might be of the opinion that a more proper meaning could be placed upon the language of the statute. (*State ex rel. Kaiser vs. Adkins*, Aud., 18 O. C. C. (N. S.) 349; *U. S. vs. Healey*, 160 U. S. 136; *State vs. Brown*, 121 O. S. 73; *McCaughn vs. Hershey Chocolate Co.* 51 U. S. S. C. 510.

You state that for a great number of years your department, as well as your predecessors in office, and the department of building and loan associations have adopted and enforced a uniform construction of the provisions of the statutes in question, that is, both the office of Secretary of State and the office of the Superintendent of Building and Loan Associations have construed and enforced such statute as requiring that all certificates of amendment to articles of incorporation, certificates with reference to building and loan associations and certificates of dissolution, merger and consolidation of building and loan associations should be first approved by the Superintendent of Building and Loan Associations before filing, while if the question of the interpretation of Sections 9643 and 9643-3, General Code, were to be construed by me without such administrative practice I might or might not arrive at the same construction in every particular, which has been placed thereon and enforced by the department of building and loan associations. Yet, I am of the opinion that since such sections are ambiguous and such departments have adopted and enforced such uniform interpretation over a period of years it should not be disturbed.

Specifically answering your inquiry it is my opinion that:

1. When the practice of a department in which the administration of a state law has been placed is uniform and long continuing and the meaning of the statute, upon examination, is found to be ambiguous or doubtful, such interpretation can not be disturbed unless it can not be reconciled with the language of the statute.

2. In view of the uniform and long continued practice of your department and the ambiguity contained in Sections 9643 and 9643-3, General Code, the Secretary of State may not file in his office certificates of amendment to the articles

of incorporation of a building and loan association or of dissolution of such association until such certificates shall have been first submitted to, and approved by the Superintendent of Building and Loan Associations of Ohio.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1755.

APPROVAL, BONDS OF SHAKER HEIGHTS VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY, OHIO, \$28,000.00.

COLUMBUS, OHIO, October 23, 1933.

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

1756.

SOLDIERS' RELIEF COMMISSION—MEMBER THEREOF MAY NOT BE APPOINTED AS INVESTIGATOR.

SYLLABUS:

A member of the soldiers' relief commission may not be employed as an investigator under the provisions of section 2933-1, General Code.

COLUMBUS, OHIO, October 23, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

Section 2933-1, as enacted by House Bill No. 556 empowers the Soldiers' Relief Commission to employ investigators to investigate applications for allowances by the Soldiers' Relief Commission.

QUESTION: May one of the members of the Soldiers' Relief Commission be employed as an investigator under the provisions of this section?"

Section 2933-1, General Code, enacted at the recent session of the legislature, reads as follows:

"The soldiers' relief commission is hereby empowered to employ such investigators and clerks as may be necessary to carry on relief work when the necessity arises. These investigators and clerks shall be honorably discharged veterans of the war with Spain, or the world war, and shall not be required to take a civil service examination. Their compensation shall be such as established by the soldiers' relief commission, and shall be paid from the county allotment of soldiers' relief funds."

Your inquiry relates to the question of whether or not a member of the soldiers' relief commission may be employed as an investigator by such commission. The newly enacted section 2933-1 is silent upon this question. There is, however,