

Code, in so far as they apply to the judges of any of the courts created by the constitution other than the common pleas court and the supreme court, are invalid."

In specific answer to your third question, it is my opinion that the provision of Article IV, Section 14 of the Constitution that votes for a judge of the supreme court or judge of the court of common pleas for an elective office, except a judicial office, under authority of this state, given by the general assembly, or the people, shall be void, has no application to judges of a municipal court.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4078.

BANK—MAY AMEND ARTICLES OF INCORPORATION TO CHANGE PLACE OF BUSINESS PROVIDING SUPERINTENDENT OF BANKS CERTIFIES APPROVAL.

SYLLABUS:

A bank, by amendment of its Articles of Incorporation, approved by the Superintendent of Banks, may change the place where its business is to be transacted from one city, village or township in the state of Ohio to another city, village or township in the state of Ohio.

COLUMBUS, OHIO, February 20, 1932.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion, which reads as follows:

"Under date of June 17, 1931, you rendered to me your opinion No. 3335, in which you stated, among other things:

'It is my opinion that when a bank has a legally established branch in a village contiguous to the village in which its principal place of business is located, such bank may file with the Secretary of State its amended Articles of Incorporation, changing its principal place of business to that of its branch bank.'

Since rendering this opinion, Section 710-73, therein quoted, has been amended, permitting a bank to operate branches in other parts of the county or counties in which the municipality containing the main branch is located.

I now have an inquiry before me as to whether or not a bank may by an amendment to its Articles of Incorporation change its place of transacting business from one municipality to another municipality, both of which are located in the same county but not being contiguous and would, therefore, appreciate your opinion."

Touching the question raised by your communication, I said at page 5 of Opinion No. 3335, rendered to you under date of June 17, 1931:

"In the event a bank were to seek by amendment to change its principal place of business from one community to a city or village not contiguous, very possibly such an amendment would be inconsistent with section 710-73, supra, particularly in view of the localized nature of banks as hereinabove commented upon. However, you do not inquire as to such matter and no opinion is expressed thereon."

In that opinion I had for consideration the question as to whether a bank, having a branch, could, by amendment to its Articles of Incorporation, change its principal place of doing business to the branch bank, retaining its former principal place of doing business as a new branch bank.

Since the question you now present deals exclusively with the power of a bank to change its principal place of transacting business from one community in a county to another in the same county, the discussion contained in my opinion above referred to, and hereinabove quoted in part, is not applicable. I am further of the opinion that section 710-73, General Code, as it existed at the time the above opinion was rendered, or as amended in 114 O. L., 109, is not pertinent to the question now presented.

The banking laws of Ohio authorize and require that the Articles of Incorporation of a bank set forth "the place where its business is to be transacted, designating the particular city, village or township." Section 710-41, General Code. Section 710-42, General Code, provides:

"The official character of the officer before whom the acknowledgment of articles of incorporation is made, shall be certified by the clerk of courts of common pleas of the county in which the acknowledgment is taken and the articles shall be filed in the office of the secretary of state.

The secretary of state shall forthwith transmit to the superintendent of banks a copy of such articles of incorporation and shall not record the same until duly authorized so to do by the superintendent of banks as hereinafter provided."

Section 710-43, General Code, provides:

"Such persons shall, at or before the time such articles of incorporation are forwarded to the secretary of state, cause notice to be published in a newspaper published in the place where such bank is to be located, and if no newspaper is published in such place, then in one published nearest thereto. Such notice shall specify the name of the proposed bank, its location, the amount of its proposed capital and the names of the persons who propose to incorporate the same. Such notice shall be published for two weeks and a certified copy thereof furnished to the superintendent of banks."

Section 710-44, General Code, provides:

"Upon receipt of a copy of the articles of incorporation of such pro-

posed bank, the superintendent of banks shall at once examine into all the facts connected with the information of such proposed corporation including its location and proposed stockholders and if it appears that such corporation, if formed, will be lawfully entitled to commence the business of banking, the superintendent of banks shall so certify to the secretary of state, who shall thereupon record such articles of incorporation. But the superintendent of banks may refuse to so certify to the secretary of state, if upon such examination and investigation he has reason to believe that the proposed corporation is to be formed for any other than legitimate banking business, or that the character and general fitness of the persons proposed as stockholders in such corporation, are not such as to command the confidence of the community in which such bank is proposed to be located or that the public convenience and advantage will not be promoted by its establishment, or that the name of the proposed corporation is likely to mislead the public as to its character or purpose; or if the proposed name is the same as one already adopted, or appropriated by an existing bank in this state, or so similar thereto as to be likely to mislead the public, unless the place of business of such proposed corporation is to be located in a county other than the one in which the corporation bearing such similar name is then doing business and the corporation so adopting such name adds thereto the words 'of.....' (Indicating thereby the name of the city, village or township in which its place of business is situated.)

Section 710-46, General Code, provides :

“Upon receipt of such certificate from the superintendent of banks the secretary of state shall record said articles of incorporation; one copy thereof, duly certified by the secretary of state shall thereupon be furnished to the incorporators of such corporation, and one copy to the superintendent of banks, to be by him filed in his office. All certificates thereafter filed in the office of the secretary of state relating to such corporation shall be recorded, and a certified copy thereof forthwith furnished to the superintendent of banks and filed in his office.”

Section 710-47, General Code, provides in part:

“When such articles of incorporation are so recorded, the persons who subscribe them, their associates, successors and assigns, by the name designated therein, shall become a body corporate with succession, and, as such shall have power:

* * * * *

(d) To adopt regulations for the government of the corporation, not inconsistent with the constitution and laws of this state;

(e) To do all needful acts, to carry into effect the objects for which it was created.”

Section 710-50, General Code, specifies the manner in which regulations of the corporation may be adopted or changed. This section is pertinent in so far as the regulations of the banking corporation must be altered to provide for the new conditions incident to such change in its location.

Section 710-52, General Code, provides:

“Such corporation shall be created, organized, governed and conducted, and directors shall be chosen in all respects in the same manner as provided by law for corporations organized under the general incorporation laws of this state, in so far as the same shall not be inconsistent with the provisions of this act.”

Section 8623-14, General Code, authorizes a corporation, organized under authority of the general corporation act, to “change the place in this state where the principal office is to be located” by amendment to its Articles of Incorporation. The general corporation act defines “Articles of Incorporation” as including amendments thereto. There is nothing inconsistent with the provisions of the Banking Code of Ohio in the provisions of Sections 8623-2 and 8623-14, General Code. Opinions of the Attorney General for 1931, No. 3335. An amendment to the Articles of Incorporation of a bank must comply with all the provisions of the banking act applicable to original Articles in so far as the same are pertinent. Opinions of the Attorney General for 1931, No. 3335, *supra*. I refer specifically to sections 710-41, 710-42, 710-43, 710-44 and 710-46, General Code, *supra*.

In direct answer to your inquiry, I am of the opinion that a bank, by amendment of its Articles of Incorporation, approved by the Superintendent of Banks, may change the place where its business is to be transacted from one city, village or township in the State of Ohio to another city, village or township in the State of Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4079.

AGRICULTURAL SEEDS—LICENSE FOR SALE OF SUCH—DUTY OF
DIRECTOR OF AGRICULTURE TO ISSUE LICENSE FOR SALE—NO
POWER TO REVOKE LICENSE FOR VIOLATION OF SEED LAW.

SYLLABUS:

1. *All persons except those exempted by section 5805-6, General Code, must obtain a license for each place of business in which agricultural seeds are offered or exposed for sale, solicited for sale or sold as is required by the provisions of section 5805-13, General Code, regardless of the quantity of agricultural seeds offered for sale or sold.*

2. *A salesman soliciting orders for agricultural seeds is not required to comply with the licensing provision of section 5805-13, General Code, when such orders are not solicited in any place where seeds are offered or exposed for sale, solicited for sale or sold.*

3. *The tags required to be affixed on packages or containers of agricultural seeds or mixtures must be placed thereon before leaving the premises of the vendor of agricultural seeds or mixtures.*

4. *The director of agriculture has no power, express or implied, to revoke a license issued by virtue of section 5805-13, General Code; nor does the director of agriculture have the power or authority, express or implied, to refuse to issue a*