

3502.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND R. W. LOOMIS, COLUMBUS, OHIO, COVERING CONSTRUCTION AND COMPLETION OF GENERAL CONTRACT FOR REPAIRS TO ROOF OF MAIN BUILDING, COLUMBUS STATE HOSPITAL, COLUMBUS, OHIO, AT EXPENDITURE OF \$8,448.00. SURETY BOND EXECUTED BY THE INDEMNITY INSURANCE COMPANY OF NORTH AMERICA.

COLUMBUS, OHIO, July 3, 1926.

HON. G. F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf of the Department of Public Welfare, and R. W. Loomis, of Columbus, Ohio. This contract covers the construction and completion of general contract for repairs to roof of main building, Columbus State Hospital, Columbus, Ohio, and calls for an expenditure of \$8,448.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Indemnity Insurance Company of North America appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

C. C. CRABBE,

Attorney General.

3503.

THE SECRETARY OF STATE SHOULD NOT ACCEPT ARTICLES OF INCORPORATION, THE PURPOSE CLAUSE OF WHICH INDICATES THE COMPANY IS BEING FORMED FOR THE PURPOSE OF HOLDING AND DEALING IN STOCKS OF KINDRED NON-COMPETITIVE CORPORATIONS.

COLUMBUS, OHIO, July 3, 1926.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter concerning the purpose clause of the proposed Ohio Red Star Company.

You are advised that you are justified in refusing to accept the Articles of Incorporation of the Ohio Red Star Company with the following purpose clause:

"Said corporation is formed for the purpose of purchasing, owning, holding and dealing in the capital stocks of kindred non-competing motor transportation companies and other kindred non-competing private corporations; provided, however, that nothing contained herein shall authorize the formation of a trust or combination for the purpose of restricting trade or competition."

The applicants, no doubt, have attempted by following the specific wording of the statute to bring themselves within the terms of the law. It is my opinion that the word "kindred" as used in section 8683 of the General Code applied to the relationship between the company purchasing and owning the stock and the company issuing the same rather than the several companies of which the holding or purchasing company might purchase or own stock.

This interpretation is supported by two decisions of courts of appeals in Ohio, 12 O. C. C., N. S., page 49, wherein it was held that a railway company cannot buy stock in a coal company; also in 28 O. C. A., page 241 there is a decision which supports this stand.

In that case a foreign corporation legally organized was, under the laws of its own state, authorized to purchase stock in other corporations. The import of the opinion of Judge Killetts is to the effect that such a corporation by purchasing stock of an Ohio corporation is not thereby doing business in Ohio to such an extent or in such a way as to compel it to comply with the laws of Ohio in regard to a corporation doing business in this state.

There are two opinions of attorney generals of Ohio upon this question, one being at page 968 of the opinions of 1903, the second being at page 61 of opinions, volume 1, for 1911 and 1912.

At the top of page 62, Attorney General Timothy S. Hogan definitely says, in volume I of the 1911 and 1912 reports:

"In other words, it is not lawful in this state for a corporation to be engaged in the business of owning stocks. The power which all corporations have in this respect is purely incidental and may not be extended beyond the strict terms of the statute. This is because the statutes themselves are in derogation of the common law rule."

This opinion is strengthened in the instant case due to the fact that the corporation sought to be organized is one for purchase of stock in public utility companies primarily. It might be that the courts would look beyond the corporate identity to the real nature of the business transacted which would be through the stock ownership a public utility business.

Such a rule is suggested in 106 O. S., page 138, the case of the Ohio Mining Company et al., vs. The Public Utilities Commission of Ohio. If such were true, it is definitely settled in this state in the Pollitz cases, 97 O. S., 191 and 99 O. S., 449, that a public utility corporation cannot issue stock for the purpose of buying stock in another public utility corporation.

It is, therefore, my opinion that the Articles of Incorporation of the Ohio Red Star Company, as submitted, should not be accepted by your office.

Respectfully,
C. C. CRABBE,
Attorney General.