

of Ohio, acting by the Department of Public Welfare, and The Jos. L. Skeldon Engr. Co., of Toledo, Ohio. This contract covers the construction and completion of two (2) steam driven air compressors (12x14x12 Union) for The Boys' Industrial School, Lancaster, Ohio, and calls for an expenditure of four thousand one hundred and thirty-two dollars (\$4,132.00).

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. You have also submitted a contract bond upon which the United States Fidelity and Guaranty Company 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,  
EDWARD C. TURNER,  
*Attorney General.*

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940.

APPROVAL, BONDS OF WELLSTON CITY SCHOOL DISTRICT, JACKSON COUNTY, \$9,300.00.

COLUMBUS, OHIO, August 31, 1927.

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

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941.

CORPORATION—HUMANE SOCIETY MAY NOT CONSOLIDATE WITH ANOTHER CORPORATION NOT FOR PROFIT AND RETAIN CERTAIN SPECIAL PRIVILEGES.

*SYLLABUS:*

*A humane society, incorporated under Sections 10062 to 10084 of the General Code, inclusive, may not consolidate with another corporation not for profit so as to retain for the consolidated corporation the special privileges extended by law to humane societies.*

COLUMBUS, OHIO, September 2, 1927.

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

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"This department has been asked to advise as to possibility of consolidation of two corporations not for profit. Copy of the letter from the attorneys for the corporations interested is enclosed.

Section 67 of the General Corporation Act, in reference to consolidation, not only appears in the portion of the Act relating to profit companies, but the provisions of the section are such as to indicate that companies for profit are the only ones referred to. Further in the portion of the act concerning corporations not for profit there is no provision for consolidation.

May two corporations, not for profit, consolidate under Sections 67 et seq. of the Act?"

The answer to the general question which you present is found in section 114 of the new general corporation act (Amended Senate Bill No. 11), which provides as follows:

"A corporation not for profit may be dissolved or consolidated in the same manner, so far as applicable, as corporations for profit."

It is unnecessary for me to set forth in full the provisions of the law relative to the consolidation of corporations for profit, but section 114 evidently extends the benefit of consolidation to corporations not for profit.

You attach to your communication, however, a letter from the president of the Cleveland Humane Society, which is as follows:

"May we ask your opinion as to the possibility of the consolidation of the following corporations not for profit:

The Children's Aid Society of Cleveland was incorporated September 22, 1865, for the purposes as stated in the copy of the Articles of Incorporation enclosed;

The Cleveland Humane Society was incorporated under Sections 10062 to 10084, inc., of the laws providing for the incorporation of humane societies, as contained in the General Code.

The question is whether these two organizations can be consolidated into one corporation, each retaining the powers and functions which they now have under the law. It is the desire of both societies to effect a consolidation under the name and charter of The Children's Aid Society if that can be done without impairing the rights, powers and privileges of the Humane Society."

I find upon examination of the enclosure referred to in this letter that the objects of the Children's Aid Society of Cleveland, as contained in the original record of the proceedings, as filed with the Recorder of Cuyahoga County in 1865, are as follows:

"Its first object is to co-operate with the City Council of Cleveland in promoting the interests and welfare of the Cleveland Industrial School and especially in sustaining the Home Department of the School as approved by a resolution of the Council adopted in 1857.

Its second object is to establish and maintain under its exclusive jurisdiction one or more additional Industrial Schools as occasion may require, for the benefit and proper education of the neglected, destitute and homeless children of Cleveland and its vicinity and thus furnish them a home until

they can maintain themselves or be otherwise provided with suitable homes in families."

While as I have before stated, there is no question concerning the right of two ordinary corporations not for profit to consolidate, a serious question is presented in the specific case because of the fact that the Cleveland Humane Society is a special kind of corporation whose existence is authorized by special sections of the General Code. The authority for the incorporation of such a society is found in Sections 10067 and 10068 of the General Code. These sections are as follows:

Sec. 10067. "Societies for the prevention of acts of cruelty to animals may be organized in any county, by the association of not less than seven persons. The members thereof, at a meeting called for the purpose, shall elect not less than three of their members directors, who shall continue in office until their successors are duly chosen."

Sec. 10068. "The secretary or clerk of the meeting must make a true record of the proceedings thereat, and certify and forward it to the secretary of state, who shall record it. This record shall contain the name by which such association is to be known, and from and after its filing, the directors and associates, and their successors, will be invested with the powers, privileges and immunities incident to incorporated companies. A copy of such record, duly certified by the secretary of state, shall be taken in all courts and places in this state, as evidence that such society is a duly organized and incorporated body."

The objects and purposes of the societies formed under authority of the foregoing sections are the same as those of the Ohio Humane Society, which is authorized under Section 10062 of the General Code, a statement of the objects being found in the succeeding section, as follows:

Sec. 10063. "The objects of such society, and all societies organized under Sections 10067 and 10068, shall be the inculcation of humane principles, the enforcement of laws for the prevention of cruelty, especially to children and animals, to promote which objects such societies may respectively acquire property, real or personal, by purchase or gift. All property acquired by gift, devise, or bequest, for special purposes, shall be vested in a board of trustees consisting of three members elected by the society, which board must manage such property, and apply it in accordance with the terms of the gift, devise or bequest, with power to sell it and reinvest the proceeds."

It is unnecessary to enumerate fully the special powers which are granted to humane societies by authority of law. These powers are comprehended within the sections from 10062 to 10084, inclusive. They include the right to appoint, upon approval of the mayor or probate judge, agents for the purpose of prosecuting any person guilty of any act of cruelty to persons or animals. The salary of such agents is payable from public funds and they are given police powers. There are other special powers which it is unnecessary to set forth.

In addition, there is specific authority found in Section 5653 of the General Code for the transfer of any surplus in the dog and kennel fund to

"a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, which has one or more agents appointed in pursuance of law, or any other society organized as provided by Sections 10062 to 10067, inclusive of the General Code, that owns or controls a suitable

dog kennel or place for the keeping and destroying of dogs which has one or more agents appointed and employed in pursuance of law."

It will thus be seen that the humane society is not only vested with certain extraordinary powers, but is also given the authority to expend public funds. Of course this expenditure is for a public purpose, but nevertheless the rights conferred upon the corporation are extraordinary in the sense that similar rights are not extended to ordinary corporations.

The extension of special privileges to a corporation is extremely unusual. The general rule may be said to be that laws extending such privileges will be strictly construed. As is stated in Fletcher Cyclopedia Corporations, paragraph 4722:

"As was explained in a former chapter, when a corporation claims under its charter any exclusive right or privilege, or any right or privilege as against the state, or otherwise as against the general public, the charter is to be construed strictly against the corporation, and in favor of the public, and such a right or privilege will not be held to exist unless it has been granted by the legislature in clear and unmistakable terms. This principle applies with full force when a corporation which has succeeded to the rights, franchises and privileges of another corporation claims such a right or privilege enjoyed by the old company, as the right of exemption from taxation, the right of exemption from legislative control in matters affecting the public," etc. \* \* \*

We find, however, in section 67 of the General Corporation Act the authority for the consolidation of corporations and the effect of the consolidation is set forth in section 68, as follows:

"When the agreement of consolidation is signed, acknowledged and filed as required in the preceding section the separate existence of the constituent corporations shall cease, and the constituent corporations shall become a single corporation in accordance with the said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities and duties of each of such corporations so consolidated; and all property, real, personal and mixed, and all debts and liabilities due on whatever account, and all other things in action of or belonging to each of such corporations shall be vested in the consolidated corporation, and all property, rights, privileges, powers, franchises, and immunities and all and every other interest shall thereafter be as effectually the property of the consolidated corporation as fully as they were the property of the several and respective constituent corporations, and the title to any real estate whether by deed or otherwise, under the laws of this state vested in any one of such corporations, shall not revert or be in any way impaired by reason thereof; provided, that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved, unimpaired, limited in lien to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or owed by it."

The language of this section is certainly very broad and apparently intends that all rights, privileges, powers, franchises and immunities of the constituent corporations shall accrue to the consolidated corporation. You will also observe that these

rights, privileges, powers, franchises and immunities are designated as both public and private. This section, coupled with section 114, above referred to, would, standing alone, apparently authorize the consolidation of the corporations which you mention and vest in the consolidated corporation all of the rights of the humane society.

Before reaching any conclusion, however, Section 132 of the general corporation act must not be overlooked. Its provisions are as follows:

"When special provision is made in the General Code for the incorporation, organization, conduct or government of corporations formed for any specified purpose, this act shall not apply, but the special provision shall govern unless it clearly appears that the special provision is cumulative."

The humane society is undoubtedly incorporated under a special provision of the General Code, viz., Sections 10062 to 10084, of the General Code, inclusive. No authority is therein conferred for the consolidation of such a corporation with any other corporation, and, in view of the fact that special privileges are extended to humane societies not available to ordinary corporations not for profit, I am very doubtful whether a consolidation may be effected without impairing the right of the consolidated company to exercise the special privileges conferred. It must be borne in mind that the broad language of Section 68 of the general corporation act has reference to the consolidation of corporations formed under general law and I do not feel that, in the language of Section 132 of the general corporation act, "it clearly appears that the special provision is cumulative," with respect to humane societies.

While the purposes of the children's aid society are germane to certain purposes of humane societies as set forth in Section 10063 of the General Code, quoted, supra, yet they are not so broad, since they are referable solely to the welfare of children, whereas humane societies are organized for the protection not only of children but also animals. There might possibly be some objection from the standpoint of the members of the children's aid society to the broadening of the purpose which would be effected by the consolidation, but I pass this over without further discussion. I feel, however, that there is sufficient doubt as to the right of the humane society, incorporated under special provisions of the General Code therefor, to consolidate with another corporation not for profit, to force me to conclude that, in the absence of judicial or specific statutory authority for such action, such right of consolidation does not exist.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

942.

#### APPROVAL, LEASE TO OHIO CANAL LAND.

COLUMBUS, OHIO, September 2, 1927.

*Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your letter of August 31, 1927, in which you enclose the following lease, executed in triplicate, for my approval:

George D. Bates, Ohio Canal land lease -----\$45,500.00