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SECRETARY OF STATE—MAY ACCEPT FOR FILING AND RECORD PROPOSED AMENDMENT TO ARTICLES OF INCORPORATION OF OHIO CORPORATION TO ENGAGE IN PARTNERSHIP, JOINT VENTURE OR SYNDICATE WITH INDIVIDUALS OR OTHER CORPORATIONS IN OPERATION OF ANY LAWFUL ENTERPRISE.

SYLLABUS:

The Secretary of State may properly accept for filing and record a proposed amendment to the articles of incorporation of an Ohio corporation wherein provision is made in express recognition of the right and power of such corporation to "engage in a partnership, joint venture or syndicate with individuals or other corporations in the operation of any lawful enterprise."

Columbus, Ohio, Sept. 15, 1952

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir:

I have your request for my opinion as follows:

"There has recently been submitted to this office for filing, under the provisions of the Ohio General Corporation Act, Section 8623-1, et seq., General Code, a proposed amendment

to the articles of an Ohio corporation, in which the resolution of amendment reads as follows:

'RESOLVED, that in addition to the present rights, powers and purposes of the Company, it shall have the right and power, and it shall be one of the purposes of the Company, to enter into and engage in a partnership, joint venture or syndicate with individuals or other corporations in the operation of any lawful enterprise.'

"Your opinion is requested on the question of whether the Secretary of State may properly accept for filing and record such proposed amendment."

In 10 Ohio Jurisprudence, page 857, Section 632, we find the statement that corporations have no authority to enter into or become members of a partnership with each other or with individuals, unless expressly authorized by statute to do so. Cited in support of this statement are *Guerinck v. Alcott*, 66 Ohio St., 94, and *Fechteler v. Palm Bros. Co.*, 133 Fed. 462. In the *Alcott* case we find the statement, p. 104, that it is "not competent for two or more corporations to unite and form a partnership," no reference having been made in this case to an exception in the event that such action were "expressly authorized by statute."

In the *Fechteler* case, we find the statement, p. 465, that corporations, "*unless expressly authorized*, have no power to enter into partnerships with each other or with individuals." (Emphasis added) This is a decision of the Circuit Court of the United States for the Southern District of Ohio, and was decided, of course, with reference to the Ohio law as it then existed.

In the several decisions, both in Ohio and elsewhere, in which it has been held that corporations might not lawfully enter into partnership agreements, stress was laid on the point that partners of a corporation would be able to bind the corporate partner by contract to the same extent that individual partners would be bound; and that this, in effect, would constitute an ousting of the directors of their statutory authority to manage corporate affairs by the appointment, as it were, of an individual agent with unlimited powers. This authority of the directors, in the case of Ohio corporations, is set out in Section 8623-55, General Code, which reads in part as follows:

"All the capacity of a corporation shall be vested in and all its authority, except as otherwise provided in this act or in the

articles in regard to action required to be taken, authorized or approved by shareholders, shall be exercised by a board of directors of not less than three persons, which shall manage and conduct the business of the corporation. * * *

This argument relative to the appointment of an agent with unlimited authority loses some of its persuasive effect when it is noted that the authority of partners to bind the partnership otherwise than in the ordinary and usual course of business has been sharply limited by the provisions of the recently enacted Section 8105-9, General Code, a portion of the Ohio Uniform Partnership Act.

Although definite provision is found in Section 8623-55, supra, to the effect that all of the capacity of a corporation shall be vested in and exercised by a board of directors, this section must be considered in relation to the recently enacted Uniform Partnership Act, Section 8105-1, et seq., General Code, effective September 14, 1949. In Section 8105-2, General Code, we find the following definition of the word "person:"

“ ‘Person’ includes individuals, partnerships, corporations, and other associations.”

In Section 8105-6, General Code, we find the following definition of "partnership:"

“A partnership is an association of two or more persons to carry on as co-owners a business for profit.”

It is to be presumed that the General Assembly, in the enactment of these definitions in the Uniform Partnership Act, was not unmindful of their application to Ohio corporations, and more particularly it is to be presumed that the Legislature was cognizant of the provision in Section 8623-55, supra, relative to the authority of boards of directors to exercise the authority and conduct the affairs of Ohio corporations.

Some weight is added to these presumptions by certain comments set out in Page's Ohio General Code as an annotation to Section 8105-2, General Code. These comments are as follows:

“The act expressly provides that a corporation may be a partner. This section includes ‘corporations’ in the definition of a ‘person’ and G. C. 8105-6 defines a partnership as ‘an association of two or more persons to carry on as co-owners a business for profit.’ This introduces a new concept to the Ohio law.”

By a note at the head of the chapter in which this section appears, we are informed that these comments were prepared by one of the co-authors of the Uniform Partnership Act and from this circumstance we may readily suppose that such comments represent the general understanding of the import of the enactment among the individual legislators who had it under study prior to the final passage.

This view of the legislative intent is further supported by the circumstance that the Uniform Partnership Act was enacted in the same legislative session in which Section 8623-55, General Code, relative to the authority of corporate directors, was amended, the latter having become effective only five days prior to the effective date of the former.

In view of these persuasive circumstances and the presumptions to which they give rise, I am impelled to conclude, in specific answer to your inquiry, that the Secretary of State may properly accept for filing and record a proposed amendment to the articles of incorporation of an Ohio corporation wherein provision is made in express recognition of the right and power of such corporation to "engage in a partnership, joint venture or syndicate with individuals or other corporations in the operation of any lawful enterprise."

Respectfully,

C. WILLIAM O'NEILL
Attorney General