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## DISAPPROVAL, ARTICLES OF INCORPORATION OF THE NORTH AMERICAN MUTUAL BENEFIT ASSOCIATION.

COLUMBUS, OHIO, February 17, 1933.

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

DEAR SIR:—I acknowledge receipt of the Articles of Incorporation of the North American Mutual Benefit Association, together with a copy of its Constitution and By-laws.

The first paragraph of these Articles reads as follows:

“The undersigned, a majority of whom are citizens of the United States, desiring to form a corporation, not for profit, under the General Corporation Act of Ohio, do hereby certify:”

As special provisions are made for incorporation of insurance companies, those special provisions and not the General Corporation Act of Ohio apply. The Articles therefore should state under what provisions of the General Code the association is to be incorporated, rather than under the General Corporation Act of Ohio.

I have examined the Constitution and By-laws and I am unable to determine under what provisions of the insurance laws this association is to be incorporated. Our insurance laws provide for certain types of life insurance companies or associations. These are legal reserve, stock or mutual companies, mutual protective associations and fraternal benefit societies, and I do not believe that this association comes within any of those classes.

I am therefore herewith returning to you the Articles of Incorporation and the copy of its constitution and By-laws without my approval.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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## COSTS—JUSTICE OF THE PEACE—SECTION 10317 G. C. LIMITED TO JUSTICES' COURTS AND CERTAIN MUNICIPAL COURTS.

## SYLLABUS:

*The provisions of section 10317, General Code, apply only to civil actions in Justices' Courts and to such actions in Municipal Courts where the statutes relating to such courts expressly provide that the fees and costs shall be taxed in the same manner as is provided for such actions before a justice of the peace.*

COLUMBUS, OHIO, February 18, 1933.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"Please give me your opinion as to Section 10317 of the General Code of Ohio, whether or not this Section applies to Justice Courts only or to all Courts."

Section 10317, General Code, is a part of chapter 6 of title II, part third of the Code. This title relates to and is entitled "Procedure in Justice's Court." A reading of the statutes under this title clearly shows that they are to apply only to civil actions in the Courts of Justices of the Peace, except where other statutes expressly provide that other courts shall be governed by these statutes. Section 10317, General Code, reads as follows:

"If a witness, subpoenaed, attends and is not examined by either party, the costs of such witness must be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter or otherwise, renders the examination unnecessary."

In several of the acts creating municipal courts, it is expressly provided that in actions where such courts have the same jurisdiction as that of a justice of the peace, the fees and costs shall be the same and taxed in the same manner as is provided for such actions before a justice of the peace. In such cases, section 10317 would apply.

I find no provision similar to that of section 10317, General Code, which would apply to other courts, and they would therefore be governed by the general provision that witness fees shall be taxed in the bill of costs. Section 3011 to 3014, General Code, both inclusive. In such cases, the fees of persons subpoenaed as witnesses, although not called upon to testify, are included in the judgment for costs and must be paid by the losing party, provided such witnesses were subpoenaed in good faith. In the case of *Pennsylvania Fire Insurance Company vs. Carnahan*, 10 C. D. 225, 19 C. C. 97, it was held as follows:

"Fees for Witnesses not examined may be included in costs. The fees of persons subpoenaed as witnesses, on the part of the prevailing party, though such persons are neither sworn nor examined as witnesses at the trial, provided they were subpoenaed in good faith, may be included in the judgment for costs."

I am of the opinion therefore that the provisions of section 10317, General Code, apply only to civil actions in Justices' Courts and to such actions in Municipal Courts where the statutes relating to such courts expressly provide that the fees and costs shall be taxed in the same manner as is provided for such actions before a justice of the peace.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*