

It is evident by the wording of this section that the legislature meant only to include corporations organized under the co-operative marketing act of Ohio.

In section 10186-24 of the General Code, which is section 24 of the co-operative marketing act, the legislature provides that "corporations or associations organized under generally similar laws of other states seeking to do business in this state, shall be allowed to carry on any proper activities \* \* \* in this state upon compliance with the general regulations applicable to foreign corporations desiring to do business in this state" \* \* \*.

We fail to find any provision in the co-operative marketing act which attempts to classify associations or corporations organized under generally similar laws of another state as being non-profit corporations.

It is not deemed necessary to review the authorities cited and quoted in opinion No. 2387 rendered by this department April 16, 1925, and this opinion should be read and considered as a supplemental opinion to the one previously rendered on this subject.

In answer to your first question, it is the opinion of this department, based upon the facts as found by you and stated in your communication, that the Grain Marketing Company is not a corporation not for profit within the purview of the securities act of this state. It, therefore, follows that said corporation is not exempted from complying with the securities laws of Ohio and the Grain Marketing Company is required to make application for a certificate of compliance before disposing of its stock in Ohio.

It is deemed that an answer to your second question is unnecessary because of the conclusion hereinbefore arrived at.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

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2429.

#### SINGLE COUNTY DITCHES—METHOD OF LEVYING ASSESSMENTS WITHIN A MUNICIPALITY.

##### SYLLABUS:

*Sections 6454, 6455 and 6484 G. C., provide a method of levying assessments within a municipality for single county ditches.*

COLUMBUS, OHIO, May 1, 1925.

HON. CHARLES B. COOK, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"In re interpretation of ditch law.

Replying to yours of April 3rd, relative to the above, asking for further information, would say that we have two or three different ditches under consideration. In one, the petition was signed by parties living in the township. The ditch arose in the township, passing into the incorporated village and there emptied into a creek which ran through the village.

Proposition No. 2 is very similar. The ditch arose outside in the township and flowing into and emptying within the incorporation.

No. 3: The ditch arises outside, passes into and through the corporation and has its terminus in the township outside of the corporation.

The question which is troubling us is the authority to levy an assessment within the incorporation. Our legislature seems to have omitted the latter part of G. C. section 6470, when the same was amended and reenacted. Will you kindly advise as to your holding in this matter?"

Section 6454 G. C., 110 O. L., page 168, in part provides :

" \* \* \* He shall also prepare a schedule containing the name of each owner of land with a description of the land believed by him to be benefited by the proposed improvement, which names of land owners and description of land believed to be benefited shall be taken from the tax duplicates of the county; and the surveyor shall enter in said schedule the approximate number of acres benefited by the proposed improvement and amount that said land, in his opinion, ought to be assessed, which opinion shall be passed upon his surveys, levels, and contours taken on the line of improvement and back from the improvement and his observation of the location and elevation of the land relative to the improvement. \* \* \* "

Section 6455, G. C., 110 O. L., page 169 provides :

"The surveyor, in making his estimate of the amount to be assessed each tract of land, and the commissioners, in amending, correcting, confirming, and approving the assessments, shall levy the assessments according to benefits; and all land affected by said improvement shall be assessed in proportion as it is specially benefited by the improvement, and not otherwise."

Section 6484 G. C., found in 110 O. L., page 184 provides :

"Upon the approval of the contracts, the commissioner shall order the auditor to reduce pro rata the assessments confirmed by them, by the difference between the estimated cost of the construction and the contract price, and the assessments so reduced, but with the cost of location included therein, shall be levied upon each parcel of land stated in the schedules as of the date of the order of the commissioners approving the contracts and ordering the levying of the assessments; the auditor shall forthwith proceed to place said assessments so levied upon the duplicates of the county, and said assessments shall be a lien after the date of the order of the commissioners approving the contracts and ordering the levying of the assessments. The auditor shall be liable on his bond for any damages sustained by any person by reason of his failure to place promptly said assessments upon the proper duplicates of the county."

The procedure for assessments for single county ditches as outlined above provides for the assessment of the cost of the improvement according to the benefits derived. It is believed that the above procedure is sufficient to make assessments for improvements which are not wholly within a municipality. For improvements wholly within a municipality the county commissioners are without authority to proceed.

Prior to the amendment of the laws relating to single county ditches in 110 O. L., section 6469, provided for a proportionate assessment according to benefits.

"After the granting of the petition for any improvement under this chapter, and the letting of contracts for work and material, and the ascertainment and determination of all known claims for compensation for property taken, or damages to property from the construction of the improvement, the total cost thereof including the preliminary cost, and the actual or estimated cost of supervision and any known costs of litigation taxed against the county shall be assessed proportionally, according to special benefits conferred, upon all the lots and parcels of land specially benefited thereby, the owners of which have, as in this chapter provided, had notice of the proceedings for such improvement, whether such lots and parcels of land abut on the improvement or not. Such assessment shall be made as well against the lands of any railway company, township, county, municipality, school district or board of education, or any other public board, as against privately owned property, for the benefit to the premises owned or controlled by such public corporation or body.

And in arriving at the amount of benefit to any piece of property due regard shall be had to any conditions that would require precedent expense before the benefit from the improvement would be available, and to any conditions that would permanently affect the degree of benefit that could be derived.

"Provided that the county commissioners, or the court, if, and when, it is found that the improvement will benefit the public health, convenience and welfare, or the result will increase to a practicable degree the valuation of property for public taxation, may order such an amount of such total cost, not exceeding ten per cent, paid from the general ditch improvement fund, or if there be not sufficient unappropriated in such fund, from any unappropriated money of the general fund of the county. And the balance shall be assessed according to benefits as herein provided."

Section 6470 G. C., as it existed before amendment provided as follows:

"In making the assessment for benefits provided for in the preceding section, the county engineer shall prepare a schedule of the lands shown by his surveys, or otherwise known to him to receive benefit from the improvement and whose owners have had notice of its proposed construction, and shall show in such schedule the number of acres believed by him to be benefited and the percentage of such benefit, on the basis of one hundred per cent benefit to the land or lands subject to assessment and receiving the highest benefit from the improvement at the least probable additional cost to make it available. And he shall in such schedule, based on such acreage, percentage, and total amount to be assessed show the amount of assessment on each separate description of land, and the owner's name, if known.

But when the council of a municipal corporation, board of education or trustees of a state, county, township or municipal public institution is a petitioner for an improvement under this chapter, or named and notified as one of the parties affected thereby, and such improvement equally benefits the whole territory, or any defined portion thereof, within the limits of such municipal corporation, whether any part of the improvement lie within such limits or not, the engineer, county commissioners, court or jury having the duty of determining what portion of the cost and expense shall be assessed upon lands within such municipal limits for such benefit, may

consider and treat such territory as a single parcel of land, and the sum so assessed shall be apportioned to all the lots and lands within the municipality or the benefited portion, by the county auditor according to the valuation of the separate parcels therein for taxation."

It will be noted that under sections 6469 and 6470 that the method of procedure was to assess the cost of construction of any improvement under this chapter according to the benefits derived. The latter section provided that when the council of a municipal corporation, board of education or trustees of a state, county, township or municipal institution was a petitioner for an improvement, or was named and notified as one of the parties affected thereby, that the portion of the improvement within such municipality could be assessed against the lands situated in such municipality as a whole, and that sum so assessed against such property could be apportioned by the county auditor according to the valuation of a separate parcel thereof as listed for taxation. This provides for two methods of assessing the cost of such improvement. The cost could be assessed according to the benefits derived by each separate property holder or could be assessed against the municipality as a whole, and assessed by the auditor against the individual land holder according to the value on the tax duplicate without regard to benefits derived.

The amendments in 110 O. L., page 161 eliminated the method of assessing within a municipality according to the value of the property upon the tax duplicate.

It is, therefore, my opinion that sections 6454, 6455, and 6484 provide a method of levying assessments within a municipality for single county ditches.

Respectfully,

C. C. CRABBE,  
Attorney General.

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2430.

#### ALLOWANCE TO JUSTICES—SECTION 3019 G. C. CONSTRUED

##### SYLLABUS:

1. *By the provisions of section 3019, General Code, the county commissioners may make the allowance to justices, provided therein, at their first meeting in January or at a later meeting.*

2. *Section 3019, General Code, does not prohibit the allowance or payment of more than one hundred dollars during any one year if the excess has been earned by the officer in some previous year or years, during which no allowance, or one below the statutory limit, was made, but merely prevents an officer from being allowed more than one hundred dollars for fees taxed any one year.*

3. *There is no statutory provision, other than section 3019, General Code, whereby a justice can get an allowance for "lost fees" in criminal cases instituted by a sheriff or county prosecutor.*

COLUMBUS, OHIO, May 1, 1925.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—On April 23rd you requested my opinion concerning interpretation of section 3019, General Code, asking three questions as follows: