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THE DEFINITION OF THE WORD "PLACE" USED IN §1701.04 (A) (2), R.C. IN REGARDS TO REQUIRING THE ARTICLES OF INCORPORATION PRESENTED FOR FILING TO STATE A STREET ADDRESS—§§1701.04, (A) (2) R.C., 1701.07 (C) R.C.

SYLLABUS:

The word "place" as used in Section 1701.04 (A) (2), Revised Code, means the city, village or township and the county where the principal office of the corporation designated in the articles being filed is to be located.

Columbus, Ohio, June 27, 1960

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

Dear Sir:

I have your request for my opinion which reads as follows:

"The Tax Commissioner of Ohio has asked us to review the age old interpretation by this office on Section 1701.04 (A) (2) of the Revised Code of Ohio. Secretaries of State for many years have always interpreted the word 'place' in the aforementioned section to mean only the city, village or township and county in Ohio wherein the principal office of the corporation is to be located.

"In view of the provisions found in subsections (A), (B), and most particularly (C) of Section 1701.07 R. C., your opinion is respectfully requested as to whether the word 'place' appearing in Section 1701.04 (A) (2) can be interpreted by this office to require articles of incorporation presented for filing to state a street address as well as the city, village or township and county where the principal office of the corporation is to be located."

Section 1701.04, Revised Code, reads in pertinent part as follows:

"(A) Three or more natural persons, a majority of whom are citizens of the United States, may form a corporation by subscribing and thereafter filing in the office of the secretary of state articles of incorporation which shall set forth:

"* * *

“(2) The place in this state where the principal office of the corporation is to be located;

“* * *

Although I have searched the decisions in Ohio, I have been unable to find any decision of any court which answers your specific question.

Perhaps the earliest and certainly the leading case in Ohio which relates to the requirement that a corporation set forth its place of business in its articles is the case of *Pelton v. Transportation Company*, 37 Ohio St., 450. This case has never been reversed and is still cited as authority for the propositions of law which it sets forth.

In deciding the *Pelton* case, *supra*, Judge McIlvaine, speaking for the court, said beginning at page 455:

“For many purposes, a corporation is regarded as having a residence—a certain and fixed domicil. In this state, where corporations are required to designate in their certificates of incorporation the place of the principal office, such office is the domicil or residence of the corporation. The principal office of a corporation, which constitutes its residence or domicil, is not to be determined by the amount of business transacted here or there, but by the place designated in the certificate. True, several offices may be established at the place specified in the certificate, as it is sufficient, under this statute, to specify the ‘county or place.’ But where a single office is established in the county, or township, or city, or other place designated, no further inquiry as to the identity of the principal office is admissible. *And, as the statute does not require the office building to be specified*, it is competent for the corporation to transfer its principal office from one building to another, within the specified county or place, whenever its own convenience or advantage may be subserved. No doubt the exact location of the office should be open and notorious, so that a secret or fraudulent removal would not avail any purpose, yet the particular motive in making the change is not material, as, for instance, whether it was done to avoid taxation. If a natural person may change his residence for such purpose (and of this there can be no doubt), we see no reason why a corporation may not do the same. Such removal is not a fraud against tax laws, unless so declared by express legislation.”
(Emphasis added)

It is to be noted that the court in the *Pelton* case, *supra*, in interpreting the statute, said that said statute did not require the office building to be specified.

The law in effect in 1882 when the *Pelton* case, *supra*, was decided, as it relates to the requirement that the location of the principal office of a company be placed in its articles, reads as follows :

“* * *

“Second, the name of the county or place where the principal office of such company is situated;

“* * *”

(See 56 Ohio Laws, 115)

The only real difference between the 1882 requirement and the law today on this subject is that Section 1701.04, Revised Code, *supra*, has omitted the word “county.”

In the case of *Sweeny, Receiver v. Keystone Driller Co.*, 122 Ohio St., 16, the court said beginning at page 19:

“* * * The evident purpose of this requirement is that there may be no uncertainty as to the place of residence of the corporation. The articles of incorporation are of record, and from that source its designated residence may be readily ascertained and known with definiteness and certainty. If such designation is not controlling, the place of residence in many instances would be in doubt, and in numerous cases, where a corporation is engaged in business in various localities in the state, it would be difficult to determine its place of residence or the place where its principal business is transacted otherwise than at the end of a lawsuit through the determination of a court. * * * This court held in the case of *Pelton v. Transportation Co.*, 37 Ohio St., 450, 457, that a certificate of incorporation specifying the place where the principal office of the company is to be located is conclusive. This declaration was relative to the return of personal property for taxation, but the principle involved is applicable here. In a comparatively recent case, *State, ex rel. Stanton, Pros. Atty. v. Zangerle, Auditor*, 117 Ohio St., 436, 159 N.E., 823, this court approved and followed the *Pelton* case and held that the principal office of the corporation, which constitutes its residence or domicile, is not to be determined by the amount of business transacted, but by the place designated in its articles of incorporation.”

It is to be noted that the court in the *Sweeny* case, *supra*, said that the purpose of requiring the location from which a corporation will transact its business in the articles is so that there may be no uncertainty as to the place of residence of the corporation. The court then went on

to cite with approval the *Pelton* case, *supra*. It would at first appear that the above quoted statement in the *Sweeny* case is inconsistent with that part of the statement in the *Pelton* case which is to the effect that a corporation need not put its exact business address in its articles of incorporation. However, I am of the opinion that the statement in the *Sweeny* case was not intended to distinguish the *Pelton* case on this matter but that the court's statement was intended to mean that by naming the place of business in the articles of incorporation the residence of the corporation could then be ascertained with certainty. I believe this conclusion is borne out by the syllabus in the *Sweeny* case which reads as follows:

“The county of residence of an Ohio corporation, within the meaning of the requirement of the statute that a chattel mortgage be filed in the county where the mortgagor resides, is the county wherein by its articles of incorporation it is to be located and its principal business transacted, until the same is changed in the manner provided by statute.”

Furthermore, as you note in your letter, the legislature in adopting Section 1701.07, Revised Code, provided for the appointment of a statutory agent. In Section 1701.07 (C), Revised Cod, the legislature specifically requires the appointment of a statutory agent to contain the “address in the county of said agent, including the street and number or other particular description.” It would appear that if the legislature intended the word “place” as used in Section 1701.04 (A) (2), *supra*, to mean the specific street address of a corporation, it would have said so as it has done in Section 1701.07 (C), Revised Code.

Also, it is a well established rule of statutory construction that where an interpretation is placed on a statute by an administrative official charged with the enforcement of the statute at or near the time of its enactment, and when such interpretation has been uniformly followed and acted upon for a long period of time such interpretation is to be given weight in the determination of the meaning of the statute involved. (See 82 Corpus Juris Secundum, pages 761-768). As you have stated in your letter “Secretaries of State for many years have always interpreted the word ‘place’ in the aforementioned section to mean only the city, village or township and county in Ohio wherein the principal office of the corporation is to be located.”

Considering the interpretation in the *Pelton* and *Sweeny* cases, *supra*, and the contemporaneous construction placed on the statute by Secretaries

of State, I am of the opinion and you are advised that the word "place" as used in Section 1701.04 (A) (2), Revised Code, means the city, village or township and the county where the principal office of the corporation designated in the articles being filed is to be located.

Respectfully,

MARK McELROY
Attorney General