589.

UNINCORPORATED BANKS—REQUIRED TO FILE ARTICLES OF CO-PARTNERSHIP OR AGREEMENT WITH THE SUPERINTENDENT OF BANKS.

SYLLABUS:

Unincorporated banks, transacting and carrying on business as a partnership, are required by the provisions of Section 710-77 to file with the Superintendent of Banks a statement which, among other things, includes a copy of the articles of co-partnership or agreement under which the business of the bank is being conducted, executed and acknowledged by all of the parties interested therein.

COLUMBUS, OHIO, June 9, 1927.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

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

> "My attention has been called to the fact that certain unincorporated banks, transacting and carrying on business as a partnership, have no written partnership agreement.
>
> I would appreciate your opinion as to whether or not it is mandatory that such banks have prepared and executed Articles of Co-Partnership, or Agreements by virtue of the provisions of Section 710-77 of the General Code of Ohio?"

By the provisions of Section 710-76 of the General Code, banking business inaugurated after the passage of the act must be done by a corporation duly organized and qualified for that purpose. The provisions of that section are as follows:

> "No authority to transact a banking business in this state shall be granted, except to a corporation duly organized and qualified for that purpose. Unincorporated banks now authorized to transact and actually transacting a banking business may continue such banking business in the city, village or township in which they are now located so long as they comply with the provisions of this act."

You will observe that present existing unincorporated banks are authorized to continue in business so long as they comply with the provisions of this act.

You refer to Section 710-77, which is as follows:

> "Every unincorporated bank now transacting a banking business in this state, shall, under oath file with the Superintendent of Banks, a full, complete detailed statement of,
>
> 1. Name of the bank.
>
> 2. A copy of the articles of co-partnership or agreement, under which the business of the bank is being conducted, which shall be executed and acknowledged by all of the parties interested therein, and at least one of whom shall be at all times a resident of the state of Ohio. If the banking business is being transacted or carried on by an individual, such individual

shall at all times, while engaged in such banking business, be a resident of the state of Ohio.

3. The county and city or village in which the bank is located, and the business carried on.

4. The amount of permanent capital actually paid in and remaining in its possession, bona fide, as its property, for the sole purposes of the bank.

5. A statement of the responsibility and the net worth of the individual members of such unincorporated bank.

6. If not disclosed in the articles of co-partnership or agreement, then the name of the officers, agents or employes in active charge of the management of the business of the bank.

Every such unincorporated bank shall on or before January 1, 1920, and annually thereafter, file with the Superintendent of Banks a detailed statement as provided herein."

This is obviously one of "the provisions of this act" to which reference is made in the preceding section.

The second requirement of the detailed statement is manifestly that where the business is being conducted as a partnership, a copy of the articles of partnership or agreement must be furnished, which "shall be executed and acknowledged by all of the parties interested therein." I have no hesitancy in holding that, in order that a partnership may transact banking business in the state of Ohio, it is necessary that full compliance with the requirements of Section 710-77 be made, and consequently if no written articles of partnership are in existence, it is necessary that they be immediately executed. This filing of the articles of partnership is a condition precedent to the continuation of a partnership in the banking business in this state, and, if execution of such articles is refused upon demand by you, you would be warranted in taking over the business for liquidation.

The case of *Wickham, Admr., vs. Farmers Bank,* 21 Ohio App., p. 182, is somewhat in point. That was an action brought upon a promissory note and one of the defenses was that the bank, being unincorporated and a partnership, had not complied with Section 8099 of the General Code, which requires every partnership doing business under a fictitious name to file the statement as to the partnership with the clerk of the common pleas court. As a defense, the bank claimed that it had fully complied with the requirements of Section 710-77, General Code. On page 174 the court said the following:

> "We think the object and purpose of the legislature, in the enactment of Section 710-77, General Code, was to cover just such cases as the instant one. Here is and was an unincorporated bank. When it had complied with the statutory law it was authorized to continue in the banking business—to sue and be sued—and to transact all matters pertaining to the acts of an unincorporated bank, as provided by said statute and kindred sections thereto."

The necessary inference from this language is that if Section 710-77 had not been complied with, no authority to continue in the banking business would exist.

It is unnecessary to discuss the unconstitutionality of such a requirement. The uniform holdings of the courts are to the effect that the state, in the exercise of police power, may go far in the regulation of the banking business.

As stated in the headnote of the case of *Noble State Bank vs. Haskell, et al.,* 219 U. S., p. 104; 55 L. Ed., p. 112:

"The police power of a state extends to the regulation of the banking business and even to its prohibition, except upon such conditions as the state may prescribe."

The regulation here in question is obviously a reasonable one designed to fix definitely the responsibility of those engaged in the business.

Answering your question specifically, therefore, I am of the opinion that unincorporated banks, transacting and carrying on business as a partnership, are required by the provisions of Section 710-77 to file with the Superintendent of Banks a statement which, among other things, includes a copy of the articles of copartnership or agreement under which the business of the bank is being conducted, executed and acknowledged by all of the parties interested therein.

Respectfully,
EDWARD C. TURNER,
Attorney General.

590.

STATE LIBRARY NOT ABOLISHED BY GOVERNOR'S VETO OF APPROPRIATION ITEMS OR BY RECOMMENDATION OF HIS VETO MESSAGE.

SYLLABUS:

State library not abolished by Governor's veto of appropriation items or by recommendations of his veto message.

COLUMBUS, OHIO, June 9, 1927.

HON. HERBERT S. HIRSHBERG, *State Librarian, Columbus, Ohio.*

DEAR SIR:—I beg to acknowledge receipt of your request for opinion reading:

"The Governor's veto of the entire library appropriation for the eighteen months beginning July 1, 1927, forces the closing of the library on June 30th. I desire your advice as to the proper procedure to be followed in closing the department and the proper disposition of the books and equipment.

The question at issue seems to be as to whether the Governor's veto and recommendations in the veto message that the state library should be abolished constitutes abolition of the department in the face of statutory enactment providing for its function. I desire to know whether in your opinion the failure of the enactment of the appropriation in itself means the permanent abandonment of the department or whether I should act upon the assumption that the means of support of the State Library are merely temporarily lacking.

My attention has been called to the General Code, Section 196-12, which provides that the state purchasing agent shall take possession of the