

341.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND MILTON H. COY, TOLEDO, OHIO, FOR CONSTRUCTION AND COMPLETION OF TWO NEW WELLS, TOLEDO STATE HOSPITAL, AT A COST OF \$5,000.00—SURETY BOND EXECUTED BY CARL W. COY AND WILLIS I. COY.

COLUMBUS, OHIO, May 14, 1923.

HON. LEÓN C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works, and Milton H. Coy, of Toledo, Ohio. This contract covers the construction and completion of two new wells for the Toledo State Hospital, and calls for an expenditure not to exceed \$5,000.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which Carl W. Coy and Willis I. Coy appear as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Evidence has also been submitted indicating that the contractor herein does not employ a sufficient number of men so as to require him to pay premium under the Industrial Commission law.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

C. C. CRABBE,

Attorney General.

342.

TAXATION—BANKING COMPANY HAVING DOMICILE IN MENTOR TOWNSHIP, LAKE COUNTY, SHOULD BE TAXED IN SAID TOWNSHIP ALTHOUGH BUSINESS IS CHIEFLY TRANSACTED IN CUYAHOGA COUNTY.

SYLLABUS:

A company coming within the purview of a bank under section 5408 of the General Code, and which has its domicile in Mentor township special school district, Lake County, Ohio, should be taxed in said Mentor township, although its business is chiefly if not entirely transacted in Cuyahoga County.

COLUMBUS, OHIO, May 15, 1923.

GENTLEMEN:—In a recent communication to this office you state as follows:

"A company within the purview of a bank for taxation purposes under the ruling laid down by your department under date of May 23rd, 1922 (Opinion No. 3128) claims as its domicile Mentor Township Special School District, Lake County. Its business is chiefly, if not entirely, transacted in Cuyahoga County."

You then inquire:

"In which county should said company be taxed?"

The taxation of banks and banking associations is regulated in this state by statute.

Section 5408 of the General Code provides as follows:

"All the shares of the stockholders in an incorporated bank or banking association, located in this state, incorporated or organized under the laws of the state or of the United States, and all the shares of the stockholders in an unincorporated bank, located in this state, the capital stock of which is divided into shares held by the owners of such bank, and the capital employed, or the property representing it, in an unincorporated bank the capital stock of which is not divided into shares, located in this state, shall be listed at the true value in money, and taxed only in the city, ward, or village where such bank is located."

Section 5411 of the General Code provides as follows:

"The cashier of each incorporated bank, and the cashier, manager or owner of each unincorporated bank, shall return to the auditor of the county in which such bank is located, between the first and second Mondays of May, annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such bank at the close of business on the Wednesday next preceding the said second Monday, with a full statement of the names and residences of the stockholders therein, the number of shares held by each and the par value of each share, and of the amount of capital employed by unincorporated banks, not divided into shares, and the name, residence and proportional interest of each owner of such bank."

It becomes necessary to determine the location of the bank. In organizing the companies in question, articles of incorporation are prepared, setting out the name of the corporation, the purposes for which it is formed, the place where it is to be located, etc. General Code, section 8625.

The National Banking Act, section 5190, Revised Statutes of the United States, provides that the usual business of the bank shall be transacted at an office or banking house located in the place specified in its organization certificate, and the words "place" and "at an office or banking house" have always been construed by the Comptroller to mean the legal domicile of the corporation, of which it can have but one, and this construction is sustained by the Solicitor of the Treasury in an opinion rendered August 10, 1899. (Nagee on Banking, p. 47.)

Where the statute authorizing the formation of corporations requires the corporation to state the place where its principal office is to be located, such statement in the certificate is frequently regarded as conclusive of the fact required to be stated. The *Union Steamboat Company v. Buffalo*, 82 N. Y. 351; *Fletcher on Private Corporation*, p. 848.

In the case of *Pelton v. Transportation Company*, 37 O. S. 450, the first paragraph of the syllabus is as follows:

"A certificate of incorporation which, under the statute, specifies the place where the principal office of the company is to be located, is conclusive as to the location of such office."

McIlvaine, J., in rendering the opinion of the Court, stated as follows:

"For many purposes, a corporation is regarded as having a residence — certain and fixed domicile. In this state, where corporations are required to designate in their certificates of incorporation the place of the principal office, such office is the domicile or residence of the corporation. The principal office of a corporation, which constitutes its residence or domicile, 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. * * * 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 (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 the tax laws unless so declared by express legislation. In the case of *Western Transportation Company v. Scheu*, 19 N. Y. 408, it was held that the organic certificate of a corporation, in which it was required to designate the city or town and county in which the principal office of the management of the affairs of the company was to be situated, was conclusive as to the location therein designated as that of the principal office of the company. In that case the question arose under a statute which provided that 'all the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the town or ward where the principal office or place for transacting the financial concerns of the company shall be'; and in the opinion, Judge Selden well said 'It is not important that a corporation should be taxed where it does the greatest amount of its business, but it is important that the place where it is liable to be taxed should be known.'"

In that case, Tonawanda, a small village in the vicinity of Buffalo was designated as the place of the principal office. The fact was that several places, especially Buffalo, had priority over Tonawanda as principal localities for the business of the company, and it seems to have been conceded that the office was located at Tonawanda to avoid taxation in Buffalo. In relation to this fact, the court said;

"But it is no more inequitable or immoral for a corporation to do this, than for an individual to do substantially the same. A person may keep his office in Buffalo and transact business there to an unlimited amount, enjoying all the facilities and advantages which the enterprise and the expenditure of the city afford, and yet by residing without the city bounds avoid all municipal taxes. When this shall be practiced, either by individuals or corporations to an extent which renders it a serious evil, it will be for the legislature to interfere."

It is therefore the opinion of this department that the company concerning which you inquire should be taxed at its domicile, namely, Mentor Township, Lake County, Ohio.

Respectfully,
C. C. CRABBE,
Attorney General.

343.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE E. KEELER COMPANY, WILLIAMSPORT, PA., FOR CONSTRUCTION AND COMPLETION OF ONE 350 H. P. BOILER, OHIO UNIVERSITY, ATHENS, OHIO, AT A COST OF \$6,843.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, May 15, 1923.

HON. LEON C. HERRICK, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works, and The E. Keeler Company, of Williamsport, Pa. This contract covers the construction and completion of one 350 H. P. Boiler for Ohio University at Athens and calls for an expenditure of \$6,843.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which The Globe Indemnity Company appear as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

You have further submitted certificate of the Secretary of State indicating that the contractor above named is qualified to transact business in Ohio.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney General.