ditor and credited to the account of the proper political subdivision. The portion of the tax belonging to the state is transmitted by the auditor once each month to the state treasurer.

It will be observed that the fees collected under sections 6294-1 and 6298 are in no case paid directly to the commissioner of motor vehicles, and do not pass through the hands of the auditor.

Section 6309-2 makes no provision for the distribution of the fees collected under the sections in question, and it is therefore my opinion that those fees should be paid into the state treasury and credited to the general revenue fund, from which the expense of issuing the duplicate licenses and registering transfers are paid.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

3936.

BANKING BUSINESS—WHERE MEMBER OF A PARTNERSHIP DECEASED—DISPOSITION OF INTEREST UNDER SECTIONS 8085 ET SEQ. G. C.—PARTNERSHIP AGREEMENT UNDER SECTION 8092 G. C.—SUPERINTENDENT OF BANKS MAY NOT LIQUIDATE BANK OPERATED BY PARTNERSHIP UNLESS SECTION 710-89 G. C. APPLIES.

SYLLABUS:

1. *In the event of the death of a member of a partnership engaged in the banking business, the interest of the partner in the business must be disposed of in accordance with the statutory provisions found in sections* 8085 *et seq., unless the partner has made provision for the continuance of the business either by articles of partnership agreement or by his last will and testament.*

2. *Section* 8092 *G. C. expressly recognizes the right of a partner in any business to provide by partnership agreement or by last will and testament for the continuance of the partnership business, in which event the assets devoted to the partnership business are to be settled and disposed of in accordance with the provisions of the partnership articles or the will.*

3. *It is not the duty of the superintendent of banks to take over for liquidation a bank owned and operated by a partners'ip upon the death of a partner, unless there exists one or more of the reasons specified in section* 710-89, *General Code.*

COLUMBUS, OHIO, January 8, 1927.

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

DEAR SIR:—Your recent inquiry is as follows:

> "Section 710-76 of the General Code of Ohio provides:
>
> '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.'

It so happens that a number of unincorporated banks in this state are owned by more than one individual and are operated as a partnership business.

This department would appreciate an opinion from you on the following:

1st. In the event of the death of a member of a partnership engaged in the banking business, should such business cease?

2nd. May a partner engaged in the banking business provide by partnership agreement or by last will and testament, that the partnership may continue notwithstanding his death?

3rd. If a dissolution of the partnership takes place immediately upon the death of a partner engaged in the banking business, and the transaction of said banking business is thereby terminated, is it the duty of the Superintendent of Banks to take over such for liquidation?"

First considering your second inquiry, in the absence of statute, the question is whether or not a partner engaged in the banking business may provide, either by partnership agreement or by last will and testament, that the business shall continue, notwithstanding his death.

This question has been considered by the courts in numerous reported decisions, exemplary of which is that of *Burwell* vs. *Cawood*, 43 U. S., 560, where the court held:

"Although by the general rule of law, every partnership is dissolved by the death of one of the partners, where the articles of copartnership do not stipulate otherwise, yet either one may, by his will, provide for the continuance of the partnership after his death; and in making this provision, he may bind his whole estate or only that portion of it already embarked in the partnership.

But it will require the most clear and unambiguous language, demonstrating in the most positive manner that the testator intended to make his general assets liable for all debts contracted in the continued trade after his death, to justify the court in arriving at such a conclusion."

In the case of *Houston, Trustee,* vs. *Houston,* Cause No. 22646, in the Common Pleas Court of Clark County, Ohio, decided by Geiger, J., July 28, 1921, unreported, in which case the Superintendent of Banks was a party, a will provided for the continuance of a partnership banking business was construed. From that case we quote the first four paragraphs of the syllabus prepared by the court, which hold as follows:

"A partner may provide by a partnership agreement or by will that the partnership may continue notwithstanding his death.

A partner, in making a provision for the continuation of his interest in a partnership after his death, may bind his whole estate or only that portion of it already embarked in the partnership.

It requires clear and unambiguous language demonstrating in the most positive manner that the testator intended to make his general assets liable for all his debts contracted in the continued trade after his death, to justify the court in arriving at the conclusion that the testator intended that his general estate should be held liable for partnership debts.

A dissolution of the partnership takes place immediately upon the death of one of its members and a continuation of the business thereafter, in pursuance either of an original agreement or under the provisions of the testator's will, is a formation of a new partnership, the terms of which, when not otherwise expressly agreed upon, may be implied, from the manner of

conducting the business, to be the same as those of the former partnership. Such new partnership is not formed unless agreed to by the successors to the original partner."

The court in its opinion cites numerous cases sustaining its conclusions above announced, among which are the following:

Burwell vs. Cawood, supra.
Ex Parte Garlan, 10 Ves., 110.
Smith vs. First National Bank, 11 Otto, 320.
Jones vs. Walker, 13 Otto, 444.
Pitkin vs. Pitkin, et al., 7 Conn., 306.
Stanwood vs. Owen, 80 Mass., 195.
Kilhoffer vs. Zeis, 179 N. Y. S., 523.
Breaux vs. Leblanc, 69 Am. St. Rep., 403.
Brew vs. Hastings, 196 Pa., 222.
Rand vs. Wright, 141 Ind., 226.
Shaw vs. Appellants, 81 Me., 207.
Wild vs. Davenport, 48 N. J. L., 130.
30 Enc. of Law and Procedure, p. 637.
Blodgett vs. Bank, 49 Conn., 9.
McLaughlin vs. Lorenz, 48 Pa., 275.
Furst vs. Armstrong, 202 Pa., 348.
Ferris vs. Van Ingen Co., 110 Ga., 102.

These cases have been examined and appear to sustain the holding. The following Ohio cases were also cited, none of which may be said to be directly in point:

Lucht, Admr., vs. Behrens, 28 O. S., 231.
Bank vs. Wight, Extr., 4 N. P., 173.
Railway Company vs. Schmidt, 8 C. C., 355.
Adams vs. Nelson, 7 C. C. (n. s.) 509.
McGrath vs. Cowen, 57 O. S., 385.

On the strength of these authorities, it is my opinion that a member of a partnership engaged in the banking business may, in the absence of a statute prohibiting same, provide by either partnership agreement or by last will and testament that the partnership business shall continue, notwithstanding his death.

We may now turn to the statutory provisions, if any, governing under such circumstances.

Sections 8085, et seq., make provision as to the duties and rights of surviving partners. Section 8092 makes provision as follows:

> "When the original articles of a partnership in force at the death of a partner, or the will of a deceased partner dispenses with an inventory and appraisement of the partnership assets, and with a sale of the deceased partner's interest therein, and such articles or will provide for a different mode for the settlement of such interest, and for a disposition thereof different from that provided for herein, such interest shall be settled and disposed of in accordance with the provisions of such articles or will."

The statute therefore recognizes the making of such provision, either in the partnership articles or by the will of the deceased partner and a disposition of the property devoted to the conduct of the partnership business is expressly provided for. No provision is made under the banking act (sections 710-1 et seq.) with reference to the subject of your inquiry.

In answer to your first inquiry, in the event of the death of a member of a partner ship engaged in the banking business, the interest of the partner in the business must be disposed of in accordance with the statutory provisions found in sections 8085, et. seq., unless the partner has made provision for the continuance of the business either by articles of partnership agreement or by his last will and testament.

In answer to your third inquiry, section 710-89 makes provision for the taking of possession of the property and business of any bank and the liquidation of its affairs for nine reasons specified. The section provides:

> "The Superintendent of Banks may forthwith take possession of the business and property of any bank to which this act is applicable, whenever it shall appear that such bank:
>
> 1. Has violated its charter or any law applicable thereto;
> 2. Is conducting its business in an unauthorized or unsafe manner;
> 3. Is in an unsound or unsafe condition to transact its business;
> 4. Has an impairment of its capital for a period of ninety days;
> 5. Has refused to pay its depositors in accordance with the terms on which such deposits were received;
> 6. Has become otherwise insolvent;
> 7. Has neglected or refused to comply with the terms of a duly issued order of the superintendent of banks;
> 8. Has refused, upon proper demand, to submit its records and affairs for inspection to an examiner of the banking department; or
> 9. Its officers have refused to be examined upon oath regarding its affairs.
>
> Such bank may with the consent of the superintendent of banks, resume business upon such conditions as may be approved by him."

The statute having specified in detail nine causes for the taking of possession of the property and business of a bank, all other causes are excluded. The doctrine of *expressio unius est exclusio alterius* applies.

Richards vs. *Bank:* 81 O. S., 348.

Unless, therefore, either one or more of the nine specified causes authorizing the superintendent of banks to take possession of the property and business of any bank exists, there is no authority in the superintendent of banks to take over for liquidation the property and business of a bank upon the death of a partner engaged in such business. In such event the disposition of the assets of the bank must be controlled by sections 8085, et seq., General Code, unless a different disposition has been made in the articles of partnership agreement or in the last will and testament of the deceased partner.

You are therefore advised that it is not the duty of the superintendent of banks to take over for liquidation a bank owned and operated by a partner, upon the death of a partner, unless there exists one or more of the reasons specified in section 710-89 of the General Code.

Respectfully,
C. C. CRABBE,
Attorney-General.