

936.

BOND INVESTMENT COMPANY—BUILDING AND LOAN ASSOCIATION—DIVISION OF SECURITIES—JURISDICTION—IDENTIFICATION—SALE; BONDS, CERTIFICATES, DEBENTURES, INVESTMENT SECURITIES, CAPITAL SHARES—PARTIAL PAYMENT, INSTALLMENT PLAN, TRUST AGREEMENT, TRUSTEE—AUTHORITY, STATE SUPERVISION.

SYLLABUS:

1. *A company other than a building and loan association whose purpose clause includes power to place or sell certificates, bonds, debentures or other investment securities of any kind, becomes a bond investment company when it commences placing or selling any such securities on the partial payment or installment plan.*

2. *When a company other than a building and loan association is authorized to engage in various types of business, including the placing or selling of investment securities of any kind on the installment plan, the Division of Securities has jurisdiction over the issuance and sale of its capital shares and securities and the supervisor of bond investment companies has jurisdiction over the issuance and sale of certificates, bonds, debentures and other investment securities of any kind when sold or placed on the partial payment or installment plan.*

3. *When a company other than a building and loan association issues certificates, bonds, debentures or other investment securities of any kind which it places or sells on the partial payment or installment plan, it is a bond investment company regardless of whether the securities it issues are secured by investments held by such company or held by a trustee for such purpose by virtue of the trust agreement with the issuing company.*

4. *When bond investment companies place or sell certificates, bonds, debentures or other investment securities of any kind on a basis whereby the purchaser may elect to pay therefor on the partial payment or installment plan or in a single payment, the supervisor of bond investment companies has supervision of the laws of this state relating to said companies, regardless of the payment method chosen.*

COLUMBUS, OHIO, July 25, 1939.

HON. PAUL L. SELBY, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication, which reads as follows:

“Section 697 of the Ohio General Code, which became effective in 1900, reads as follows:

'Every corporation, partnership or association other than a building and loan association, which places or sells certificates, bonds, debentures or other investment securities of any kind, on the partial payment or installment plan, and every investment guaranty company doing business on the service dividend plan shall be deemed a bond investment company.'

Under date of March 5, 1932 the office of the Attorney General rendered an opinion with respect to the first part of the above quoted definition. The concluding paragraph of this opinion reads:

'It is, accordingly, my opinion that in so far as Section 697, General Code, defines every corporation, partnership or association other than a building and loan association which places or sells securities on the partial payment or installment plan as a bond investment company, such section was repealed by implication at the time of the enactment of the first Securities Law in 1913.'

During the year 1935 the 91st General Assembly amended subsections 2 of section 8624-2 of the Ohio General Code, being part of what is commonly known as the Ohio Securities Act. This subsection, both before and after amendment contained the definition of 'security' upon which other sections of the Securities Act depend for their effect. This subsection after amendment reads as follows:

'The term "security" shall mean any certificate or instrument which represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property or credit of any person (as that term is defined by subsection (4) of this section 2) or of any public or governmental body, subdivision or agency, and shall include shares of stock, certificates for shares of stock, voting trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, certificates in or under profit sharing or participation agreements, or in or under oil, gas or mining leases, or certificates of any interest in or under the same, receipts evidencing preorganizations or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, and the currency of any government other than that of the United States and Canada, *but the provisions of this act shall not apply to bond investment com-*

panies or to the sale of real estate or any interest in real estate intended for burial purposes.

The term "security" shall, for the purposes of this act, be deemed to include real estate not situated in this state and any interest in real estate not situated in this state.'

I have underlined the pertinent portion of the above subsection added by the amendments of 1935, which became effective May 25, 1935.

On June 12, 1935 the Ohio Supreme Court handed down its decision in *State ex rel. Powers v. The Capital Endowment Co.*, 129 O. S. 654. This case involved a quo warranto proceeding to oust the defendant company from its corporate franchise for operating as a bond investment company without having obtained a certificate of authority to do business in Ohio and for engaging in certain other practices for which it had no authority. A reading of the case indicates that the attention of the court was called to the opinion of the Attorney General above referred to upon the question of the repeal by implication of a portion of Section 697 of the Ohio General Code. In its opinion the court says, at page 664:

'A careful study of the involved terms of these contracts discloses three grounds upon which the requested writ must issue.

In the first place the respondent has contracted to place or sell its certificates "on the partial payment or installment plan." It is expressly provided that "the purchase price" shall be paid "from time to time." It is of course true that these payments or installments are to be realized from the liquidation of a special reserve fund of assets segregated for that purpose, but this circumstance in no wise alters the fact that the purchase price is to be paid from time to time in installments or payments. It is plain that these are to be made intermittently as the uncertain process of liquidation continues.'

The quotation last set forth would seem to indicate that the Supreme Court of Ohio did not consider that the first part of the definition of a bond investment company contained in Section 697 of the Ohio General Code had been repealed.

All the powers and duties of the Superintendent of Insurance, in his capacity as Supervisor of Bond Investment Companies, are enumerated in Sections 696 to 709-3, inclusive of the Ohio General Code. Certain of these sections were amended and others enacted in Amended Substitute Senate Bill Number 244, passed as an emergency measure April 10, 1939, and signed by the Governor April 13, 1939. No provision appears in these sections specifically granting to the Supervisor of Bond Invest-

ment Companies jurisdiction over the sale and issuance of the capital shares of bond investment companies. At present there are only three bond investment companies licensed to do business in Ohio. In order that you may be fully advised as to the manner in which the companies now doing business under the Bond Investment Act conduct their operations, there are enclosed copies of the contract issued by the Central Acceptance Corporation, marked Exhibit I, the contract issued by Investors Syndicate, marked Exhibit II, and the contract issued by Fidelity Investment Association, marked Exhibit III.

The Division of Securities and the Supervisor of Bond Investment Companies respectfully request that the application of the above mentioned statutes and opinions be considered with respect to the following three companies, hereafter designated as Company A, Company B and Company C.

I. Company A is an Ohio corporation having an authorized capital consisting of 250,000 shares of preferred stock without par value and 100,000 shares of common stock without par value. The purposes for which this corporation is formed are set forth in its Articles of Incorporation attached hereto as Exhibit A-1. The amended Form 10 application for qualification of preferred and common stock states in response to Item 5 of this form which calls for a brief description of the general character of the business engaged in or to be engaged in by such issuer:

'None yet engaged in. It is proposed that the company shall be developed into a bond investment company or one issuing annuity contracts, whereupon it will qualify under the appropriate laws regulating such type of business companies, and will qualify to engage in such business in neighboring states or will cause subsidiary companies to be there organized and qualified, and in the meantime will engage in the buying and selling of property.'

The Division is informed that Company A proposes to sell and issue a contract designated as an 'Accumulating Income Annuity Contract', to be sold upon the initial payment of \$60.00 and the payment of \$120.00 per annum annually in advance until eleven annual payments or their equivalent have been made.

Article 2 of an instrument entitled 'Privileges' incorporated by reference in the annuity contract reads, 'INSTALLMENT PAYMENTS. The contract holder, in lieu of the advance annual payment of \$120.00 on each \$2,000.00 face value of this contract, shall have the option of meeting his annual requirements by making payments in advance of \$10.50 monthly, \$31.00, quarterly or \$61.00 semi-annually. All payments are payable at

the Home Office of "Y" Association in Detroit, Michigan, but may be paid to an authorized agent of the Association in exchange for a receipt countersigned by the President or Secretary. The contract holder shall have the option at any time to change from one method of payment to another upon written notice to the Association.'

Upon completion of all payments the certificate holder may receive an annual income for ten years or may receive a lump sum in full settlement. A copy of the application for the Accumulating Income Annuity Contract is attached hereto as Exhibit A-2. A copy of the proposed contract is likewise attached as Exhibit A-3 and a copy of the 'Privileges is filed herewith as Exhibit A-4.'

The specific questions with respect to Company A to which an answer is sought are:

1. Is Company A a bond investment company?
2. If the answer to No. 1 is in the affirmative, does the Division of Securities or the Supervisor of Bond Investment Companies, or both, have jurisdiction over the sale and issuance of the capital shares of Company A?
3. If the answer to No. 1 is in the affirmative, does the Division of Securities or the Supervisor of Bond Investment Companies, or both, have jurisdiction over the sale and issuance of the Accumulating Income Annuity Contracts of Company A?

II. Company B is a New York corporation. It has an authorized capital consisting of 5,000 shares of non-cumulative preferred stock, no par value, with a stated value of \$1.00 per share, and 75,000 shares of common stock, par value \$1.00 per share. The company has issued and outstanding 4,506 shares of preferred stock at a stated value of \$4,506.00. It has issued and outstanding common stock in the amount of \$12,985.60, less \$741.70 in the treasury. None of this stock has been qualified or sold in the State of Ohio.

Company B is engaged in the business of selling periodic payment certificates of varying total cost, which certificates are payable over a period of ten years. Certificates may be issued for an initial payment of as low as \$20.00, providing for payments thereafter of as low as \$10.00 per month. In such event the required payments for the first year equal \$120.00 and the maximum aggregate payments throughout the life of the account would be \$1,200.00. Payments may be made monthly, quarterly, semi-annually or annually, at the option of the certificate holder. After completion of the payments due during the first

year, subsequent payments may be increased or decreased or the manner of making payments may be changed, or payments may be suspended or resumed at will except that the failure to make any required payments when due constitutes a default. There are no fines or charges in the case of default and the certificate holder has the right to resume payments at any time, but if the required payments are not resumed and completed within one year after the date of default the certificate holder's account is subject to termination. Single payment accounts on which no further payments may be made for amounts of \$1,200.00 and upwards in multiples of \$600.00 are also accepted.

As payments are received the certificate holder is credited with a Participation or Participations. The purchase price of a Participation is determined by dividing the market value of the trust estate by the total number of Participations outstanding and adding to the result an additional sum to cover taxes, brokerage commissions on portfolio purchases and a Service Fee. Payments are made directly to a Trustee who employs the proceeds, less certain permitted fees, in the purchase of Stock Units, each unit consisting of one share of common stock of each of thirty specified industrial corporations. The interest of each certificate holder consists of his participations in the trust estate. The trust estate is principally composed of Stock Units previously purchased, cash available for the purchase of additional Stock Units and all income, profits, earnings, interest, dividends, securities, rights, warrants and other property received in connection with the Stock Units held by the Trust.

The certificate holder may at any time subsequent to the making of the first year's payments, withdraw part or all of the cash value of his certificate, which is primarily determined by the then existing value of the participations purchased. The value of the participations is primarily determined by the value of the underlying Stock Units at the time of withdrawal or termination of the account after certain deductions have been made in the nature of withdrawal or termination fees. If sufficient cash is not available in the Trust Fund, Stock Units are sold to obtain cash.

There is appended hereto as Exhibit B-2 a copy of the prospectus employed by Company B in the sale of its trust fund certificates. There is also appended as Exhibit B-2 a form of application for a trust fund certificate of Company D, and as Exhibit B-3 a specimen trust fund certificate.

The specific questions with respect to Company B to which an answer is requested are as follows:

1. Is Company B a bond investment company?

2. If the answer to No. 1 is in the affirmative, does the Division of Securities or the Supervisor of Bond Investment Companies, or both, have jurisdiction over the sale of the periodic payment plan certificates of Company B.

III. Company C is a Delaware Corporation. It has outstanding 400 shares of 6% cumulative preferred stock, par value \$100 per share, in the total amount of \$40,000 and 2,020 shares of common stock, par value 10c per share, in the total amount of \$202.00. None of this stock has been qualified or sold in the State of Ohio.

The certificates issued by the company and referred to as 'X' Plan Certificates are 'periodic payment contracts in registered form by means of which the holder may make a single or not more than 180 monthly payments to the "X" Trust Company as custodian under a trust indenture by which the holder acquires a beneficial interest in stock of the 'X' Fund, an incorporated investment company.' The 'X' Fund is an investment trust holding in its portfolio bonds, preferred stock, common stock, corporate notes receivable and cash. No commission is charged on the sale of shares of the fund to the C Company.

Periodic payment plans are available in denominations of \$10.00 per month or periodic equivalent, payments being due monthly, quarterly, semi-annually or annually. Total payment periods vary in length from ten to fifteen years. The investor may terminate his account by withdrawing shares of the 'X' Fund in the amount to which such shares were purchased from the balance of payments made after fee and other deductions. These shares may be held by the certificate holder in kind or he may have the same sold and receive cash.

There is attached hereto as Exhibit C-1 a prospectus used by Company C in the sale of its certificates. There is also attached as Exhibit C-2 a form of application for such certificates, and a specimen certificate is attached as Exhibit C-3.

The specific questions with respect to Company C to which an answer is requested are the same as are asked above with respect to Company B.

It will be seen from the above statement of facts that there are only two real differences between the plans of operation of Company B and Company C. The payments received by Company B are directly invested in the securities of industrial corporations, whereas the payments received by Company C are invested in the shares of an investment trust, the funds of which are in turn invested in industrial and government securities. Also, in liquidation the certificate holder in Company B receives

cash while the holder in Company C may receive a distribution of 'X' Fund trust shares. Neither of these differences appears to affect the application of Section 697."

While there may have been some question as to whether section 697, General Code, was impliedly repealed by the enactment of the original Ohio Securities Act in 1913, if any doubt remained after the decision in the case of State, ex rel. Powers, v. The Capital Endowment Company, 129 O. S. 654, it was removed in 1935 by the reenactment of section 8624-2(2), General Code, wherein the term "security" is defined, it being specifically provided therein that "the provisions of this act shall not apply to bond investment companies." The reference therein to "this act" applies to the Ohio Securities Act, (Sections 8624-1 to 8624-49, inclusive, of the General Code.) In determining whether or not the companies described in your inquiry are bond investment companies, the provisions of section 697, supra, as quoted in your letter, are pertinent.

Section 696, General Code, creates the office of supervisor of bond investment companies, and is as follows:

"By virtue of his office, the superintendent of insurance shall be the supervisor of bond investment companies. He shall see that the laws of this state relating to such companies are strictly enforced."

Bond investment companies are defined in section 697, which is correctly quoted in your letter.

Before placing or selling securities of any kind in Ohio, a bond investment company is required to place a deposit of \$100,000 with the state. Section 698, providing therefor, is as follows:

"Before doing business in this state, every bond investment company shall deposit with the treasurer of state one hundred thousand dollars in cash or bonds of the United States or of the state of Ohio, or of any county or municipal corporation in Ohio, for the protection of investors in the securities of such company. Such deposit shall be made out of the paid-up capital stock of such bond investment company."

The purpose of the deposit is set forth in section 699, General Code, which is as follows:

"The deposit made by a bond investment company with the treasurer of state shall be held as security for all claims of residents of this state against such company, and shall be liable for all judgments and decrees thereon, and subject to the payment

of such decrees in the same manner as the property of other non-residents. If such company ceases to do business in this state, the treasurer of state may release securities, in his discretion, retaining sufficient to satisfy all outstanding liabilities."

There is no special provision for the filing of the articles of incorporation of bond investment companies, such companies being formed under the provisions of the Ohio General Corporation Act. Section 8623-3 thereof makes the following provisions for the purpose for which corporations may be formed:

"A corporation for profit may be formed hereunder for any purpose or purposes, other than for carrying on the practice of any profession, for which natural persons lawfully may associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations, such corporations shall be formed under such provisions and not hereunder. Corporations for the erection, owning and conducting of sanitariums for receiving and caring for patients, their medical and hygienic treatment and the instruction of nurses in the treatment of disease and of hygiene shall not be deemed to be forbidden hereby."

Hence a company may be formed to perform numerous purposes, including operating as a bond investment company. This is the plan followed by Company A, as outlined in your inquiry. To date it has functioned as a corporation other than a bond investment company. Now it contemplates entering the bond investment field in addition to its other activities, and the question is, is it a bond investment company as defined in section 697, supra?

Without quoting all the sections of the Act, it is pertinent to note that a bond investment company operates under the jurisdiction of the supervisor, as provided in section 702, General Code, which is as follows:

"When a bond investment company has complied with the provisions herein relating to such companies, and the supervisor of bond investment companies is satisfied that it is doing business in accordance with law, he shall issue it a certificate of authority to do business in Ohio. Thereafter, upon the filing of its annual statement, as provided, if the supervisor is satisfied that such company has complied with all the provisions of law, he shall issue a renewal of such certificate."

It is evident that Company A, as described in your letter, is a corporation other than a building and loan association. Its purpose clause,

which accompanies your inquiry, indicates that it has ample corporate power to place or sell certificates, bonds, debentures or other investment securities of any kind. The third paragraph of its purpose clause is as follows:

“To borrow money and issue, sell or pledge bonds, promissory notes, bills of exchange, debentures, and other operations and evidences of indebtedness, payable at a specified time or times, or payable upon the happening of specified event or events, whether secured by mortgage, pledge, or otherwise, or unsecured; on behalf of itself or others.”

Clearly, Company A is at least a potential bond investment company. It also has a great many other powers included in its purpose clause, as for example, the power to buy, sell, lease or otherwise deal in real and personal property, and to manufacture, buy, sell and generally deal in goods, wares and merchandise of every description. With such powers, Company A might be engaged in business for an indefinitely long period without becoming a bond investment company. In fact, as the definition shows, it must be engaged in placing or selling investment securities before it can be classed as a bond investment company.

Coming now to a consideration of the “Accumulating Income Annuity Contract”, which Company A proposes issuing and selling, it is stipulated that the contract will be sold upon various optional partial payment or installment plans and, as you have stated, upon completion of the payments the contract provides for several optional plans of repayment to the contract holder of his investment, plus interest or profits thereon. It seems apparent that such a contract is a certificate or investment security within the meaning of section 697, *supra*. As I have heretofore observed, Company A, with its broad and flexible purpose clause, might engage in many kinds of business other than a bond investment company and might continue in such business or businesses indefinitely. Until it commences placing or selling investment securities on the installment plan, it would not be a bond investment company and the supervisor of bond investment companies would have no jurisdiction over it. Yet, such a company is formed by virtue of the same laws and in the same manner as any other company. If the mere inclusion in the purpose clause of power to become a bond investment company could strip the Division of Securities of all power, then the Division would be a useless branch of our government, for any person desiring to sell questionable or improper securities could by the simple device of incorporating and including bond investment companies' powers in the purpose clause evade the provisions which would otherwise require such securities to be exempted, qualified or registered. This the Legislature never intended.

The provisions of sections 8624-1, *et seq.*, General Code, are sufficient to require every corporation to have its stock, bonds and other

capital securities exempted, qualified or registered. The exception occurs when such company places or sells investment securities on the installment plan, at which time and as to such securities only, the provisions of sections 696, et seq., General Code are applicable and the supervisor of bond investment companies has jurisdiction, it being specifically provided in section 8624-2(2), supra, and as you have pointed out, the provisions of the Securities Act shall not apply to bond investment companies. The fact that this exception occurs in the section of the Securities Act, defining the term "security", seems to further emphasize the fact that the exception is solely as to investment securities of any kind which are placed or sold on the installment plan by bond investment companies.

Therefore, in specific answer to your questions under Plan I, it is my opinion that :

1. Company A is not a bond investment company at the present time but will become such a company the instant it places or sells an "Accumulating Income Annuity Contract", or any other form of certificate, bond, debenture or other investment security of any kind on the partial payment or installment plan.

2. The Division of Securities has jurisdiction over the sale and issuance of the capital shares of Company A.

3. The supervisor of bond investment companies has jurisdiction over the sale and issuance of the "Accumulating Income Annuity Contracts" proposed to be issued by Company A.

While Company B is a foreign corporation, the provisions of sections 696, et seq., are applicable to both domestic and foreign corporations. This was the opinion of the Attorney General in 1932 in Opinion No. 4133, Opinions of the Attorney for 1932, Vol. 1, page 337, wherein it was held in the first branch of the syllabus as follows :

"Sections 697 and 709, inclusive, General Code, are applicable to domestic as well as foreign corporations transacting business in this state."

Also pertinent thereto is section 699-1, General Code, enacted by the 93rd General Assembly and effective March 13, 1939, as follows :

"In addition to the deposits mentioned in the next two preceding sections, each such company, except those domiciled and holding certificates of authority in this state at the effective date of this act, shall deposit with the supervisor of bond investment companies, securities or assets of the kind and character permitted to be invested in by domestic life insurance companies under the laws of the state of Ohio, in an amount equal to the

cash surrender value as defined in such contracts on all contracts entered into on and after the effective date of this act by such companies with persons resident in the state of Ohio, and such bond investment companies are hereby required to maintain such deposits in such amounts as are equal to such contract liabilities.

Before receiving a certificate of authority to do business in this state for the year beginning March 1, 1940, and each year thereafter, each such company, except those domiciled in this state and holding a certificate of authority at the effective date of this act, shall deposit with the supervisor of bond investment companies securities or assets of the kind and character permitted to be invested in by domestic life insurance companies under the laws of the state of Ohio, in an amount equal to the cash surrender value of all contracts entered into prior to the effective date of this act by such companies with persons resident in the state of Ohio, and such companies are hereby required to maintain such deposits in such amounts as are equal to the contract liabilities.

All contracts or applications or subscriptions therefor entered into within the state of Ohio subsequent to March 1, 1940, by any foreign bond investment company holding a certificate of authority under the bond investment act shall contain a statement to the effect that the company maintains a deposit equal in amount to the cash surrender value as defined in said contracts in securities or assets of the kind or character permitted to be invested in by domestic life insurance companies under the laws of the state of Ohio, which deposit is segregated for the protection of contract holders resident in the state of Ohio.

All deposits required under this section shall be held by the supervisor of bond investment companies for the protection and benefit of their contract holders who are residents of Ohio. * * *

Company B unquestionably is a corporation other than a building and loan association. From the plan outlined, it seems apparent that it is engaged in placing or selling "periodic payment certificates" on the partial payment or investment plan. It is assumed that sales are being made in Ohio, otherwise the question would never have arisen. While the definition of bond investment company contained in section 697, supra, does not say that sales or placements must be made in Ohio, there would be no object in the statutory requirements such as the placing of a deposit of \$100,000 with the state, as provided in section 698, supra, and the jurisdiction and supervision of the supervisor of bond investment companies, unless sales or placements were to be made in this state. It also seems evident that "periodic payment certificates" are included in the

definition under the terms "Certificates, bonds, debentures and other investment securities of any kind."

As previously pointed out, the Division of Securities is concerned with the sale of securities in Ohio. Securities are defined in section 8624-2(2), supra, which specifically excludes bond investment companies and reference to bond investment companies must be to the investments they sell or place. As Company B is a foreign corporation and none of its stock has been sold in the state of Ohio, the Division of Securities is excluded from jurisdiction over it.

Under Plan II you state that Company B is engaged in the business of selling "periodic payment certificates" with several different plans for payment, including single payment accounts. Since the definition refers to placements or sales "on the partial payment or installment plan", doubt may arise as to who has jurisdiction to supervise single payment accounts. It seems reasonable to assume that the same official should have supervision of all sales of contracts of the same type. If payable in two or more installments, as I have pointed out, the supervisor of bond investment companies has jurisdiction and the deposit made by the bond investment company is available as security for all claims of residents of this state against such company. It would be inconsistent to hold that another purchaser of the same type investment security from the same bond investment company would not have access to the deposit in the hands of the Treasurer of State simply because this purchaser had elected to pay for his investment in one lump sum. It would be equally inconsistent to hold that the purchaser's election to make a single payment would take supervision from the supervisor of bond investment companies and hand it to the Division of Securities. The object of the bond investment company act is not to regulate the ordinary business of corporations but to protect investors of this state. I note that in several states the definition includes single payments along with the partial payment or installment plan. It is my opinion that when bond investment companies place or sell certificates, bonds, debentures or other investment securities of any kind on a basis whereby the purchaser may elect to pay therefor on the partial payment or installment plan or in a single payment, the supervisor of bond investment companies has supervision of the laws of this state relating to such companies regardless of the payment method chosen.

In specific answer to the questions you have submitted under Plan II, it is my opinion that:

1. Company B is a bond investment company.
2. The supervisor of bond investment companies has jurisdiction over the sale of the "periodic payment certificates" of Company B.

Although the plan of Company C differs somewhat from the plan of Company B in that the payments made under the Company C plan are made to a trustee which holds the portfolio of stocks, bonds and notes,

yet it is Company C that issues the certificate referred to as "X" Plan Certificates". Again, we have a corporation other than a building and loan association which places or sells the certificates. As in the former plans, the certificates are sold on a partial payment or installment plan. These characteristics are sufficient to constitute Company C a bond investment company, so far as the definition of a bond investment company is concerned, it makes no difference whether the securities it invests in, referred to as its portfolio, are held directly by it as is shown by Company B, or held by a trustee under the terms of a trust agreement which is the plan adopted by Company C. Each of these companies is engaged in placing or selling investment securities on the partial payment or installment plan which constitutes each of them bond investment companies.

In specific answer to your inquiries under Plan III, it is my opinion that:

1. Company C is operating as a bond investment company.
2. Since none of its capital stock has been sold in Ohio, for the reasons given under Plan II, I am of the opinion that the Division of Securities has no control over Company C, and that the supervisor of bond investment companies has jurisdiction over its sales of "X" Plan Certificates."

Respectfully,

THOMAS J. HERBERT,
Attorney General.

937.

BOARD OF EDUCATION—LANDS VESTED—MAY BE ASSESSED FOR PUBLIC IMPROVEMENTS BY MUNICIPAL AUTHORITY—SECTION 3812 G. C.—FAILURE TO PAY ASSESSMENT—AMOUNT, INTEREST AND PENALTY MAY BE COLLECTED BY SUIT IN ACTION AGAINST BOARD.

SYLLABUS:

Lands vested in a board of education may be assessed by municipal authorities, for public improvements, under and by authority of Section 3812, General Code, the same as property otherwise owned and if the assessment is not paid at the proper time as fixed by the municipal authorities making the assessment, the amount assessed, together with interest and the penalty as provided by statute, may be collected by suit in an action against the board of education as provided by law for the collection of such assessments, interest and penalty.