

shall be subject to the tax limitations; and (b) that not more than one mill of whatever levy less than one and one-half mills is made shall not be subject to the tax limitations.

The purpose and intent of the legislation is to authorize county commissioners to provide a fund for use in connection with state aid projects; authorizing a levy of one-half mill subject to the tax limitations and a levy of one mill outside of the tax limitations.

To give strict application to the rule as laid down in the former opinion would in counties where the tax levying situation was such as not to permit the levying of one-half mill within the tax limitations, deprive such counties of all authority to make any levy whatever outside of the tax limitations. It seems clear that such was not the intention of the legislature, but, on the other hand, by the plain language of the statute the county commissioners are, under the second paragraph thereof, authorized to determine, in cases in which less than one and one-half mills are levied, what part of the levy made shall be and what part thereof shall not be subject to the tax limitations; their determination being subject to the limitations hereinbefore pointed out.

The former opinion, referred to, is not followed.

It would follow, and you are advised, that in cases where a levy of less than one and one-half mills is made, any part or all of one mill may be levied outside the tax limitations even though one-half mill is not levied subject to the tax limitations.

12. Under the provisions of section 1222 of the General Code, may the one-half mill referred to be placed outside of all tax limitations by a vote of the people?

There is no statute authorizing the submission of the proposition to remove the part of the levy referred to from the tax limitations. By the provisions of the statute, this part of the levy is subject to the tax limitations.

Respectfully,

C. C. CRABBE,

Attorney General.

3266.

ENDOWMENT CERTIFICATES ISSUED BY BOND INVESTMENT COMPANIES DO NOT COME WITHIN THE CLASSIFICATION OF SECURITIES AS DEFINED IN SECTIONS 6373-1 AND 6373-2 OF THE GENERAL CODE OF OHIO—SPECIFIC TYPE OF CERTIFICATES CONSIDERED.

SYLLABUS:

1. *Companies which place or sell endowment certificates on the partial payment or installment plan are subject to the provisions of the bond investment statutes and such certificates are not to be treated as securities as contemplated by sections 6373-1 and 6373-2, General Code.*

2. *The classification of agents and the requirements to be met by bond investment companies are controlled by the provisions of section 697 to 709, inclusive, of the General Code.*

COLUMBUS, OHIO, April 14, 1926.

HON. CYRUS LOCHER, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your communication has been received, which is as follows:

“The Capital Endowment Company of Cleveland has been insistent that we get an opinion from the Attorney General with reference to the following:

The Capital Endowment Company sells endowment certificates payable in monthly installments, bearing interest, I think, at the rate of 5 per cent per annum. These certificates become due at the end of either ten or twenty years. They have qualified in the Division of Securities, have taken out a dealers' license, furnished the proper bonds—both the dealer's bond and the agents' bonds. They have been contending, however, for some time that these endowment certificates are not securities and under the law they should not be required to take out a dealer's license nor should it be necessary to qualify their agents.

Will you please give us an opinion with reference to the same?"

You have also enclosed sample endowment policy, which on its face provides as follows:

"UNITED STATES OF AMERICA
Series B No. —

STATE OF OHIO

ENDOWMENT	(SEAL)	CERTIFICATE
\$ 5000		\$ 5000

THE CAPITAL
ENDOWMENT COMPANY
CLEVELAND OHIO

Will pay to the lawful owner of this certificate on surrender at maturity the sum of

FIVE THOUSAND DOLLARS

provided there has been paid hereon to this company, during the Accumulation Period, the total sum of

TWENTY-ONE HUNDRED AND TWENTY-FIVE DOLLARS

beginning with an initial payment of two hundred and fifty dollars, and the balance in equal monthly installments of thirty-one dollars and twenty-five cents each, in advance. When all installments have been paid, and the whole time of the Accumulation Period has elapsed, this certificate becomes a Full Paid Endowment Certificate.

The maturity of this certificate shall be one hundred and forty-four months after it has become a Full Paid Endowment Certificate, and neither this certificate nor any part hereof shall become due and payable until maturity except as set forth in the privileges hereon.

This certificate may be assigned and transferred, as provided in the privileges and conditions hereof.

This certificate is issued in consideration of the signed application therefor, and together with said application and the privileges and conditions recited on the subsequent pages hereof and made a part hereof, constitutes the entire agreement between the Company and the certificate owner.

Executed and issued by The Capital Endowment Company at Cleveland, Ohio, this _____ day of _____ 19____.

Secretary.

President."

Section 697, General Code, is 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.”

The foregoing endowment certificate is clearly within the province of the foregoing section, and it must therefore be concluded that The Capital Endowment Company is a bond investment company.

Section 6373-1, General Code, provides:

“Except as otherwise provided in this act, no dealer shall, within this state, dispose or offer to dispose of any stock, stock certificates, bonds, debentures, collateral trust certificates or other similar instruments (all hereinafter termed ‘securities’) evidencing title to or interest in property, issued or executed by any private or quasi-public corporation, co-partnership or association (except corporations not for profit) or by any taxing subdivision of any other state, territory, province or foreign government, without first being licensed so to do as hereinafter provided.”

Section 6373-2, General Code, provides:

“The term ‘securities,’ as used in this act, shall not be deemed to include conveyances of real estate; or, where the same have not been judicially declared invalid, and where, at the time of such sale, there is no default in payment of any part of the interest or principal of the same:

1. Mortgage bonds and notes (other than corporate bonds where more than fifty per cent of the entire issue is not included in a sale to one purchaser) secured by a bona fide mortgage on real estate;
2. Securities of quasi-public corporations, the issuance of which has been authorized by the public service commission of this state;
3. The stock or obligation of any national bank, or of any bank, trust company or building and loan association, organized under the laws of this state and subject to examination and supervision by the proper authorities thereof.

The term ‘dealer’ as used in this act, shall be deemed to include any person or company, except national banks, disposing, or offering to dispose, of any such security, through agents or otherwise, and any company engaged in the marketing or flotation of its own securities either directly or through agents or underwriters or any stock promotion scheme whatsoever, except:

- (a) An owner, not the issuer of the security, who disposes of his own property, for his own account; when such disposal is not made in the course of repeated and successive transactions of a similar character by such owner; or a natural person, other than the underwriter of the security, who is a bona fide owner of the security and disposes of his own property for his own account;
- (b) One, who in a trust capacity created by any law of the United States or of this or any other state or by judicial authority, lawfully disposes of any property embraced within such trust;
- (c) A bank or trust company, organized under the laws of this state and subject to examination and supervision by the proper authority thereof,

selling a security for a licensee, other than the issuer or underwriter thereof, at a commission of not more than two per cent, where such bank or trust company is not a regular dealer in securities;

(d) One, not the issuer, who disposes of securities to a licensee under this act or to a company which, as a part of its regular business, deals in or holds such securities;

(e) A pledgee selling, in the ordinary course of business, a security pledged to him as security for debt in good faith and not for the purpose of avoiding the provisions of this act;

(f) The issuer, organized under the laws of this state where the disposal in good faith and not for the purpose of avoiding the provisions of this act, is made for the sole account of the issuer, without any commission and at a total expense of not more than two per centum of the proceeds realized therefrom plus five hundred dollars and where no part of the issue to be disposed of is issued, directly or indirectly, in payment for patents, services, good will, or for property not located in this state; provided that the president and secretary, or the incorporators if done before organization, of the issuer shall, prior to such disposal, file with the 'commissioner' a written statement setting forth the existence of all such facts and that such issuer is formed for the purpose of doing business within this state.

As used in this act, the term 'company' shall include any corporation, co-partnership or association, incorporated or unincorporated, and whenever and wherever organized; 'dispose of' shall be construed to mean 'sell, barter, pledge or assign for a valuable consideration or obtain subscriptions for;' 'issuer,' the original issuer of the security; and, where the context demands it, words in the present tense include the future tense; in the masculine gender include the feminine and neuter gender; in the singular number include the plural, and in the plural, the singular number; the word 'whoever' includes all persons natural and artificial, principals, agents and employees; 'and' may be read 'or,' and 'or' 'and.'"

The endowment certificate herewith presented is a mere promise to pay a specified amount of money, conditioned upon the payment of installments in specified amounts at specified times. So far as the certificate says, there is no title to or interest in property provided for.

In the case of *Grobby vs. The State of Ohio*, 109 O. S., page 543, the Court on page 546 say:

"The instruments, to deal in or dispose of which a dealer is required by this act to have a certificate of license, are, by the act itself, defined as 'instruments evidencing title to or interest in property.' Lexicographers similarly define the term 'security' as:

'An evidence of debt or of property, as a bond, stock certificate or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession.'"

Provision has been made by legislative enactment to provide supervision over different classes of investments of the public and the institutions handling money.

Provision has been made for the supervision of banks, building and loan companies, etc., and one designated class as bond investment companies.

The endowment certificate herewith furnished is so fully within the provisions of section 697, General Code, it does not seem that it can have any other standing than that of a certificate as defined therein.

It would seem that the legislature has intended that the certificates issued by bond investment companies were not intended to come within the classification of securities as defined in sections 6373-1 and 6373-2 G. C.

Upon this holding it could not be construed that bond investment companies should be required to take out a dealer's license.

It would also follow that the classification of agents and the requirements to be made by bond investment companies would be controlled by the provisions of sections 697 to 709, inclusive, of the General Code, which sections provide the chapter of statutes under the head "Supervisor of Bond Investment Companies."

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

3267.

APPROVAL, BONDS OF VILLAGE OF SOUTH EUCLID, CUYAHOGA COUNTY, \$5,000.00.

COLUMBUS, OHIO, April 14, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3268.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DISTRICT, CUYAHOGA COUNTY, \$17,000.00.

COLUMBUS, OHIO, April 14, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

3269.

APPROVAL, BONDS OF UPPER ARLINGTON VILLAGE SCHOOL DISTRICT, FRANKLIN COUNTY, \$121,561.28.

COLUMBUS, OHIO, April 14, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.