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BANKS—OWNERSHIP OF REAL PROPERTY

1. BANKING QUARTERS—§1105.14 RC; HOLDING TITLE UNDER §1105.17 RC—CORPORATE OWNERSHIP CANNOT EXCEED THAT ALLOWED TO BANK — PERSONALTY OWNERSHIP LIMITED; INCIDENTAL TO REALTY
2. INTERCORPORATE PROPERTY HOLDING BY BANK UNAUTHORIZED, WHEN—§§1105.14, 1105.17 RC
3. AUTHORIZATION IN §1105.14(A), RC, RELATES ONLY TO PROPERTY USED IN TRANSACTION OF BANKING BUSINESS—NOT FOR INVESTMENT PURPOSES
4. DETERMINATION OF “USEFUL FOR TRANSACTION OF THE BANK’S BUSINESS” UNDER §1105.14 RC, ONE OF FACT TO BE DETERMINED BY SUPERINTENDENT OF BANKS IN FIRST INSTANCE INCIDENT TO AUTHORITY OF CHAPTER 1111., RC, TO EXAMINE OPERATIONS AND APPRAISE ASSETS

SYLLABUS:

1. Under the provisions of Section 1105.14, Revised Code, a bank may own land and buildings occupied by such bank for its banking quarters, and as provided in Section 1105.17, Revised Code, may hold such ownership indirectly through stock ownership of one or more corporations owning such lands and buildings; but no such corporation may own real property which the bank itself is not authorized, under the provisions of division (A) of Section 1105.14, Revised Code, to own; nor may any such corporation own personal property except as that ownership is purely incidental to the ownership of such real property as it is authorized to own.

2. The provisions of Sections 1105.14 and 1105.17, Revised Code, do not authorize a bank to own the stock of a corporation which in turn owns the stock of another corporation which holds title to the land and buildings occupied by such bank for its banking quarters.

3. The authorization set out in division (A) of Section 1105.14, Revised Code, for a bank to own buildings and lands which are “useful for the transaction of the bank’s business” has reference only to such buildings and lands as are useful for the bank’s business as such, and not to buildings or land held purely for investment purposes.

4. Determination of whether particular buildings and lands are “useful for the transaction of the bank’s business” within the meaning of Section 1105.14, Revised Code, is one of fact which may be determined in the first instance by the Superintendent of Banks as an incident of his authority, under Chapter 1111., Revised Code, to examine a bank’s operations and to appraise its assets.

Columbus, Ohio, July 3, 1957

Hon. Paul Hinkle, Superintendent of Banks
Department of Commerce, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Bank A owns all of the stock of corporation X. Corporation X owns the land and building occupied by bank A and also owns all of the stock of a real estate holding company.

"The holding company purchased three adjacent lots and erected thereon two separate buildings, the buildings being separated by a fifty foot lot. The buildings are single purpose; one is leased to bank A and used as a branch bank, and the other is leased to the United States Government as a Post Office branch.

"Section 1105.14 of the Revised Code, provides in part that

'A bank may purchase, lease, hold and convey only such real estate * * * (A) it consists of a building, quarters in a building, or lands on which are or may be erected buildings useful for the transaction of the bank's business and from portions of which, not required for its use, a revenue may be derived * * *.'

"Section 1105.17 of the Revised Code, provides in part that

'* * * for the purpose of determining the amount which may be invested within the limitation provided in this section, there shall not be included * * * stock of a corporation owning the land or buildings occupied by such bank for its banking quarters * * *, which shall be carried on the books of the bank as an investment or equity in real estate * * *'.

"I would, therefore, appreciate your opinion as to whether or not that portion of real estate owned by the real estate holding company (which is wholly owned by corporation X) that is separate and apart from building used by bank A for its branch banking quarters, is held in conformance with the applicable sections."

Section 1105.14, Revised Code, reads as follows:

"A bank may purchase, lease, hold, and convey only such real estate as comes under at least one of the following:

(A) It consists of a building, quarters in a building, or lands on which are or may be erected buildings useful for the transaction of the bank's business and from portions of which, not

required for its use, a revenue may be derived. The book value of such buildings and the lands on which they are erected shall not exceed fifty per cent of the bank's capital, except that with the written approval and consent of the superintendent of banks the book value of such buildings and lands may be not more than fifty per cent of the capital and surplus of such bank.

(B) It is mortgaged or conveyed to the bank in good faith by way of security for loans made by or money due to such bank.

(C) It has been purchased by the bank at sales upon the foreclosure of mortgages owned by it, or on judgments or decrees rendered for debts due to it, or in settlements effected to secure such debts, or has been acquired under section 1103.37 of the Revised Code. All real property referred to in this division shall be sold by such bank within five years after such property becomes vested in it, unless upon application by the board of directors of such bank, the superintendent extends the time within which such sale may be made. Any such real property may be exchanged for other real property, upon such terms as the owner bank deems advisable, if, when a cash consideration is to be given by the owner bank as a part of the transaction, such exchange is not made until it has been approved by the superintendent.

(D) It consists of such lands and buildings as, in the opinion of the superintendent, are necessary to provide parking facilities for motor vehicles in connection with the conduct of the bank's business."

Division (A) herein authorizes a bank to hold real estate, a building, quarters therein or lands on which are or may be erected buildings useful for the transaction of the bank's business and from portions of which, not required for its use, a revenue may be derived. It limits the value of the property not to exceed 50% of the capital and it limits the use of that property to the particular business. Divisions (B) and (C) also are limitations on the holding of real estate, while division (D) authorizes automobile parking facilities where deemed by the superintendent to be necessary. However, we are not concerned with such divisions (B), (C) and (D) beyond the fact that only division (A) applies to the specific question at hand and that the *entire statute is one of limitation on the authority of a bank to hold real estate.*

In the situation you describe, however, the bank does not own the building, any quarters in a building, or lands on which are, or may be, erected buildings for its business. Corporation X owns the "land and building" occupied by the bank, presumably the bank's main office, al-

though that point is hardly important in this discussion. All of the stock of such corporation is owned by the bank. Authorization for the bank holding such stock is provided in Section 1105.17, Revised Code, which reads in part:

“Not more than ten per cent of the capital and surplus debentures or capital notes, or both, of a bank having capital and doing business under Chapters 1101., 1103., 1105., 1107., 1109., 1111., 1113., and 1115., of the Revised Code, except that for the purpose of this limitation only such amount of debentures or capital notes, or both, shall be considered as is not in excess of the capital and surplus, and not more than three per cent of the deposits and surplus of societies for savings or savings societies organized under sections 1109.01 to 1109.15, inclusive, of the Revised Code shall be invested in the stocks, securities, or evidences of debt of any one issuer, provided that for the purposes of determining the amount which may be invested within the limitation provided in this section, there shall not be included any bonds or other obligations enumerated in divisions (A), (C), (D), and (I) of section 1105.15 of the Revised Code, or in the exceptions to the general provisions of section 1105.21 of the Revised Code or any loans or obligations required to be included under the general provisions of section 1105.21 of the Revised Code; *or in the stock of a corporation owning the land or buildings occupied by such bank for its banking quarters, and then the book value thereof shall not exceed fifty per cent of its capital, except with the written approval and consent of the superintendent of banks the book value of such stock may be in an amount not to exceed fifty per cent of the capital and surplus of such bank, which shall be carried on the books of the bank as an investment or equity in real estate; * * **” (Emphasis added.)

A bank is thus authorized to own the stock of a corporation which in turn owns the banking quarters; and this provision, it should be noted, is an *exception to the statutory limitations on investment in the securities of one issuer.*

However, corporation X, in addition, owns all of the stock of a real estate holding company, which company has purchased land and has constructed thereon what you describe as “a single purpose building” which is occupied by a branch of the bank in the transaction of its banking business. Such holding company has also erected another single purpose building which is occupied by the United States Post Office Department as a branch post office.

It is at once clear that although the statutory exception noted above confers authority on the bank to own bank premises indirectly by the device of stock ownership of a corporation which holds legal title to such premises, it does not authorize a bank to own such premises through the device of ownership of the stock of a corporation which in turn owns the stock of a second corporation which holds such legal title. In short, the statute permits only one corporate entity to be interposed between the bank and the legal title to the property involved.

In passing I may add that I see no reason why a bank could not, under this provision, own the stock of two or more such corporations, each of which owns one or more buildings used as banking quarters, particularly in a situation where branches have been established and more than one bank building is required in the bank's operations.

Latent in your inquiry is the question of whether the X corporation, in the situation you describe, could lawfully own property in addition to the "lands or buildings" described in Section 1105.17, Revised Code. On this point I may say initially that I deem it necessary to interpret that section *in pari materia* with Section 1105.14, Revised Code, and so to conclude that the holding corporation device authorized in the former may be utilized to hold title to any real property which the bank, under the provisions of division (A) of Section 1105.14, Revised Code, is itself authorized to own.

It is at once evident that if X corporation, in the case here involved, can own real property, or any property, other than that described in division (A) of Section 1105.14, Revised Code, then its power to hold such property exceeds that of the bank itself. If this were so then the bank would be able to use this device of sole ownership of corporate stock to own real property, indirectly, far beyond the limitations of Section 1105.14, Revised Code. Moreover, if corporation X should be deemed to have unlimited authority to own other property, such as securities of one issuer, then it is obvious that the bank would be able to use this device to avoid completely the investment limitations set out in Section 1105.17, *supra*.

This, of course, cannot be the law; and I must therefore conclude that the exception noted above in Section 1105.17, Revised Code, requires that the corporation "owning the land and buildings occupied by such bank" be limited in its own investments to such real property as the bank itself might own directly under authority of division (A) of Section 1105.14, Revised Code; and to such personal property as is purely incidental to

such ownership of realty, *i.e.*, such as the bank might itself own as an incident of its ownership and operation of such building.

In the case at hand it is argued that the structure occupied by the branch post office is a mere "lateral extension" of the structure occupied by the branch bank, and that this is no different from the "vertical extension" which is involved where a bank owns an office building only part of which is occupied as banking quarters.

Where a *single structure* is involved this argument is tenable.

It is pointed out, moreover, that division (A), *supra*, refers to "buildings", and it is argued that this covers the situation at hand.

Obviously a bank may require quarters in many buildings to house all of its branches, but any and all of such buildings must be "useful for the transaction of the bank's business." This I take to mean useful for the bank's *banking* business, *i.e.*, its *banking* transactions with its customers, and not merely useful to its business of realizing a profit from its investments, for this phase of its business is expressly limited by Section 1105.17, Revised Code, and these express limitations cannot be avoided by what, at the most, is an ambiguous inconsistency in Section 1105.14, Revised Code.

I am unable to see how a building could be useful to a bank's *banking* business, as distinguished from the business of investing its funds, without in some way being used as banking quarters or as a necessary adjunct thereto.

Any decision on the point of whether a particular structure is useful to a bank's banking business is, however, one of fact, which I could not, as a matter of law, determine. It would appear, however, to be within the scope of your authority, in making your examination of the bank's operations and the evaluation of its assets as provided in Chapter 1111., Revised Code, to make such determination of fact in a particular case after a consideration of all the facts and circumstances involved.

I may point out also that recognition of the "lateral extension" theory will clearly involve serious difficulty if extended to structures not actually occupied as banking quarters. An example will be seen in the modern "shopping center" where some dozens of buildings are situated one beyond the other on adjoining parcels. Could a bank situated in the middle of such a block own, through the corporate device here involved, a dozen or

so properties on either side of its own premises? If so, the clear objectives of the statutory limitations noted above in Sections 1105.14 and 1105.17, Revised Code, are wholly defeated. Such nugatory effect is scarcely the proper objective of statutory interpretation.

Thus it is my view that any real property owned by a corporation under the statutory provisions here involved must be limited to that which is occupied by the bank for its banking quarters or must be such as is useful for the transaction of the bank's business as such and not held solely for the purpose of investment.

In reaching these conclusions I do not mean to hold that a bank may not utilize the initial provision in Section 1105.17, Revised Code, authorizing the investment of ten per cent of its capital in the stock of one issuer, in a situation where such issuer holds, among other assets, title to real property for investment purposes where such ownership is incidental to its principal business. It is obvious, however, that care must be taken in such case that such provision is not used as a means of avoiding the plain limitations in Section 1105.14, Revised Code, on the power of the bank to own such real property directly, for otherwise such limitations would be rendered largely nugatory.

Accordingly, and in specific answer to your inquiry it is my opinion that:

1. Under the provisions of Section 1105.14, Revised Code, a bank may own land and buildings occupied by such bank for its banking quarters, and as provided in Section 1105.17, Revised Code, may hold such ownership indirectly through stock ownership of one or more corporations owning such lands and buildings; but no such corporation may own real property which the bank itself is not authorized, under the provisions of division (A) of Section 1105.14, Revised Code, to own; nor may any such corporation own personal property except as that ownership is purely incidental to the ownership of such real property as it is authorized to own.
2. The provisions of Sections 1105.14 and 1105.17, Revised Code, do not authorize a bank to own the stock of a corporation which in turn owns the stock of another corporation which holds title to the land and buildings occupied by such bank for its banking quarters.
3. The authorization set out in division (A) of Section 1105.14, Revised Code, for a bank to own buildings and lands which are "useful

for the transaction of the bank's business," has reference only to such buildings and lands as are useful for the bank's business as such, and not to buildings or land held purely for investment purposes.

4. Determination of whether particular buildings and lands are "useful for the transaction of the bank's business" within the meaning of Section 1105.14, Revised Code, is one of fact which may be determined in the first instance by the Superintendent of Banks as an incident of his authority, under Chapter 1111., Revised Code, to examine a bank's operations and to appraise its assets.

Respectfully,
WILLIAM SAXBE
Attorney General