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1. INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT—NOT A CORPORATION WITHIN MEANING OF SECTION 710-111 (i) G. C.
2. STATE BANK—MEMBER OF FEDERAL RESERVE SYSTEM—PERMITTED TO INVEST IN INVESTMENT SECURITIES EVIDENCING INDEBTEDNESS OF INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT.

SYLLABUS:

1. The International Bank for Reconstruction and Development is not a corporation within the meaning of Section 710-111 (i), General Code of Ohio.

2. A state bank which has become a member of the Federal Reserve System is permitted to invest in investment securities evidencing indebtedness of the International Bank for Reconstruction and Development.

Columbus, Ohio, August 13, 1947

Hon Paul A. Mitchell, Superintendent of Banks
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is requested as to whether bonds or obligations issued by the International Bank for Reconstruction and Development are eligible for investment by State Banks in Ohio. This request is based on the following set of facts:

1. The International Bank for Reconstruction and Development is an international institution established and operating under Articles of Agreement which were drawn up by the United Nations Monetary and Financial Conference held at Bretton Woods, New Hampshire in 1944. Forty-four governments are members of the Bank which officially began operations June 25, 1946. Under its Articles the Bank possesses full juridical personality and, in particular, the capacity to contract, to acquire and dispose of property and to institute legal proceedings. Actions may be brought against the Bank in the territories of any member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. The Bank has an authorized capital stock of \$10,000,000,000.00 divided into 100,000 shares of the par value of \$100,000.00 each.

2. Investment securities are defined by Section 710-III (i) of the General Code of Ohio as:

'Marketable obligations evidencing indebtedness of any corporation in the form of bonds, notes and debentures, and equipment trust certificates, commonly known as investment securities, under such further definition and restriction as may from time to time be prescribed by the superintendent of banks with the approval of the banking advisory board.'

3. The Superintendent of Banks, under date of 21 August, 1941 issued 'Regulation III-A-Investment Securities' which further defines and restricts the term 'Investment Securities' to

'A corporate obligation evidencing indebtedness of the issuing corporation in order to qualify as an investment security within the meaning of subparagraph (i) of Section 710-III, General Code, above quoted, must be salable under ordinary circumstances with reasonable promptness at a fair value; * * *.'

4. Section 710-5 of the General Code of Ohio reads, in part, as follows:

'Every bank, in addition to the powers, rights and privileges possessed by it under the laws of Ohio shall have the right and power:

'(1) To become a member bank under the federal reserve act upon the terms and conditions set forth in said federal reserve act, or hereafter provided by law. Every bank which becomes a member bank shall have the right and power to do everything required of or granted by said federal reserve act to members which are organized under state laws; * * *'

5. Paragraph 19 of Section 9 of the Federal Reserve Act states that:

'State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph "Seventh" of Section 5136 of the Revised Statutes, as amended.'

6. Paragraph "Seventh" of Section 5136 of the Revised Statutes, as amended, reads, in part, as follows:

'As used in this section the term "Investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency.'

7. The Comptroller of the Currency, under date of 27 June 1938 issued his 'Investment Securities Regulation' further defining the term 'Investment Securities'.

8. Since Section 710-111 (i) of the General Code of Ohio restricts investment securities to 'marketable obligations evidencing indebtedness of any corporation', it was proposed in H. B. No. 196, introduced in the 97th General Assembly, Regular Session 1947-1948, to amend Section 710-111 (a) as follows:

'(C) To invest an amount not exceeding in the aggregate ten percent of its capital stock and surplus in bonds or other obligations issued by the international bank for reconstruction and development.'

The General Assembly removed the above quoted Paragraph '(C)' before passing H. B. No. 196 thereby making bonds or

other obligations of the international bank ineligible for investment by State Banks.

9. Your opinion is respectfully requested on the following points:

First. Is the International Bank for Reconstruction and Development a corporation within the meaning of Section 710-111 (i) of the General Code of Ohio?

Second. If the International Bank for Reconstruction and Development is not a corporation within the meaning of Section 710-111 (i) of the General Code of Ohio, are obligations issued by this Bank eligible for investment by State Banks in Ohio which are members of the Federal Reserve System?"

I shall now direct my attention to your first question which reads:

"Is the International Bank for Reconstruction and Development a corporation within the meaning of Section 710-111 (i) of the General Code of Ohio?"

As pointed out in your letter the Articles of Agreement of the International Bank for Reconstruction and Development were formulated by the United Nations Monetary and Financial Conference at Bretton Woods, New Hampshire, in 1944. These articles begin with the following statement:

"The governments on whose behalf the present agreement is signed agree as follows: * * *"

Under the Bretton Woods Agreement Act the President was authorized to accept membership for the United States in the International Bank for Reconstruction and Development provided for by the Articles of Agreement of the Bank. See 5 F. C. A., Title 22, Section 286.

While an examination of these articles indicates that the bank so formed has many of the characteristics of a corporation it lacks the characteristic of having been established by a sovereign power. It owes its existence to an agreement in the nature of an "association" of the various nations who become members thereof.

The term "corporation" has not been defined by statute in this state. Our courts in defining this term have included therein the concept that a corporation must have its existence through sovereign power.

“A corporation is the collection of many individuals uniting in one body joined together by written articles of incorporation under legislative authority for perpetual succession.”

See 10 O. Jur., Section 3, page 42; State, ex rel. Chapman, v. Urschel, 104 O. S. 172.

The Constitution of Ohio (1851) provided authority for the formation of corporations in Article XIII, Section 1, as follows:

“The General Assembly shall pass no special act conferring corporate powers.”

Section 2 provides in part as follows:

“Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed.”

And, as it is stated in 18 C. J. S., Corporations, Section 23, page 404:

“Corporations can be created and exercise corporate powers only by authority expressed or implied from the sovereign power, that is, only by or under authority of an act of the legislature.”

There are no common law corporations in the United States. See 18 C. J. S., Section 424. Nor can the legislatures of two or more states by concurrent legislation unite in creating corporations as the same corporate entity in each state. 18 C. J. S., Section 32. If the legislatures of two or more states cannot unite to create a corporation, I fail to see how two or more nations could so unite. Of course the Congress of the United States has power to create corporations as an appropriate means of executing powers conferred by the Constitution (Article I, Section 8, Clause 18) upon it or upon the general government or any department or officer thereof. 18 C. J. S., Corporations, Section 29.

As pointed out in your letter in defining investment securities Section 710-111 (i), General Code, says in part:

“Marketable obligations evidencing indebtedness of any corporation * * * .”

The term “corporation” should then have the meaning commonly given and understood, namely, a corporation formed and owing its existence to a sovereign power. Nor could it be said that the legislature

intended to include within the term "corporation" an international bank whose existence or contemplated existence was not before them at the time the act was passed.

It is interesting to note that our present legislature failed to pass a proposed amendment to Section 710-111 (i), General Code, (see H. B. No. 196) permitting investments by state banks in the bonds or other obligations issued by the International Bank.

I am therefore of the opinion that the International Bank for Reconstruction and Development is not a corporation within the meaning of Section 710-111 (i), General Code of Ohio, and consequently state banks which are not members of the Federal Reserve System cannot lawfully invest in its obligations.

Your second question reads as follows:

"If the International Bank for Reconstruction and Development is not a corporation within the meaning of Section 710-111 (i) of the General Code of Ohio, are obligations issued by this Bank eligible for investment by State Banks in Ohio which are members of the Federal Reserve System?"

As previously pointed out, Section 710-111, General Code, provides in part:

"A bank may invest its funds in the following securities:
* * *

(i) Marketable obligations evidencing indebtedness of any corporation * * * ."

Having reached the conclusion that the International Bank is not a corporation, and that state banks other than members of the Federal Reserve System are therefore not permitted to invest in the bonds and securities of the International Bank, it remains to be determined whether state banks which are or become members of the Federal Reserve System are by our state law treated differently.

Section 710-5, General Code, gives power to state banks to become member banks under the Federal Reserve Act and further provides that:

"Every bank which becomes a member bank shall have the right and power to do everything required of or granted by said federal reserve bank to member banks which are organized under state law; * * * ."

In 1914 the legislature enacted Section 9796-2, General Code, which contained in substance the above mentioned portion of Section 710-5, General Code, as it exists today. Section 9796-2, General Code, was repealed in 1919 and Section 710-5, General Code, was enacted. This latter section also contained in substance the same language as above quoted. In 1935 Section 710-5, General Code, as it had theretofore existed, was repealed and a new section bearing that same number and also containing in substance the same language was enacted in its present form and at that time Section 335, Title 12, 4 F. C. A., having been enacted in 1933 (see U. S. Statutes at Large, Volume 48, Part I, Public Laws, page 165) provided in part as follows, in which form it has continued today:

“State member banks shall be subject to the same limitations and conditions with respect to the purchasing, selling, underwriting, and holding of investment securities and stock as are applicable in the case of national banks under paragraph ‘Seventh’ of Section 5136 of the Revised Statutes, as amended.”

Paragraph Seventh of Section 5136 of the Revised Statutes, above referred to, is found in 4 F. C. A., Title 12, Section 24, paragraph 7, which provides in part as follows:

“As used in this section the term ‘investment securities’ shall mean marketable obligations evidencing indebtedness of any person, co-partnership, *association*, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further term ‘investment securities’ as may by regulation be prescribed by the Comptroller of the Currency.”
(Emphasis added.)

It would seem that our legislature in passing Section 710-5, General Code, in 1935, has granted to said member banks those rights and powers and subject to the limitations and conditions set forth in 4 F. C. A., Title 12, Section 335, as said section then existed, which includes the right to invest not only in marketable obligations of corporations but also of any associations.

An association is a body of persons acting together without a charter but upon methods and forms used by corporations for the prosecution of some common enterprise. In the absence of statutory provisions and under the general rule the organization of unincorporated associations rests upon the contract of the associates, usually embodied in a written instrument

designated "constitution" or "articles of association." 7 C. J. S., Sections 1 and 3, Associations.

On May 29, 1947 it was announced by Preston Delano, Comptroller of the Currency, that:

"National banks may purchase the debentures of the International Bank for Reconstruction and Development up to the full legal limit of ten percent of their capital and surplus."

The "articles" signed by the member nations creating the international bank would surely result in an "association" of the member nations for that purpose.

Your letter has furnished me no facts upon which I could determine whether the obligations of the International Bank are "marketable" within the meaning set forth in 4 F. C. A., Title 12, Section 24, and whether the obligations possess the other necessary characteristics as set forth in Regulations of the Comptroller of the Currency for June 27, 1938, found in Code of Federal Regulations of the United States of America, Cumulative Supplement, Book III, Title 12, page 3755, to which reference is made. I am therefore assuming that they are "obligations" possessing these characteristics.

I am therefore of the opinion that a state bank which has become a member of the Federal Reserve System is permitted to invest in investment securities as that term has been defined by the Comptroller of the Currency and within the limitations as to amounts placed thereon under 4 F. C. A., Title 12, Section 24, evidencing indebtedness of the International Bank for Reconstruction and Development.

Respectfully,

HUGH S. JENKINS,
Attorney General.