

2256.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND GEO. SHUSTICK & SON, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF ROOF, COLUMBUS STATE HOSPITAL, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$9,425.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, June 20, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and Geo. Shustick & Son, of Columbus, Ohio. This contract covers the construction and completion of general contract for renewal of roof of main building, Columbus State Hospital, Columbus, Ohio, and calls for an expenditure of nine thousand four hundred and twenty-five (\$9,425.00) dollars.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond, upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2257.

BANKS—SECTION 710-180, GENERAL CODE, CONSTRUED—COMMERCIAL OR SAVINGS BANK OR TRUST COMPANY MAY NOT ENGAGE IN SPECIAL PLAN BANKING.

SYLLABUS:

1. *A commercial bank, savings bank, trust company or a combination of two or more or all of such classes of business may not engage in the special plan banking authorized by Section 710-180 of the General Code.*

2. *A special plan bank, incorporated as such and functioning under Section 710-180, may not engage in the business of a commercial bank, savings bank, trust company or combination of two or more of such classes of business.*

COLUMBUS, OHIO, June 20, 1928.

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

DEAR SIR:—This will acknowledge your recent communication, as follows:

"This department has recently been advised that the Comptroller of the Currency has ruled that national banks may operate a department devoted to special plan banking as contemplated by Section 710-180 of the General Code of Ohio, and make what is ordinarily termed industrial loans.

Since said section was enacted it has been the holding of this department, construing the same in connection with Section 710-41 (a), that commercial banks, savings banks and trust companies or a combination of two or all, incorporated under the laws of this state, cannot engage in special plan banking.

Since the Comptroller of the Currency has ruled as above stated, quite a few commercial and savings banks, some possessing trust powers, have requested permission to establish a department to be devoted to special plan banking.

I would appreciate your opinion as to whether or not a commercial bank, savings bank, trust company or a combination of two or more or all, incorporated under the laws of Ohio, may engage in special plan banking as provided in Section 710-180 of the General Code, and, if so, must a bank desiring to engage in this class of banking amend its Articles of Incorporation taking on this additional power or may it do so as an incident to the powers already granted it.

Further, I would like to know if a bank incorporated under the laws of the State of Ohio as a special plan bank may engage in the business of a commercial bank, savings bank, or both, and if so must its Articles of Incorporation be amended by making provision therefor in the purpose clause thereof."

I note you refer to Section 710-41 (a), but, in view of your inquiry, I interpret this to be a typographical error, and that you have reference especially to paragraph c of that section. The whole section is as follows:

"Any number of persons, not less than five, a majority of whom are citizens of this state, may associate and become incorporated to establish a commercial bank, a savings bank, a trust company, or to establish a bank having departments for two or more or all of such classes of business, upon the terms and conditions and subject to the limitations hereinafter and by law prescribed.

Such persons shall subscribe and acknowledge before an officer authorized to take acknowledgment of deeds, articles of incorporation, the form of which shall be prescribed by the Secretary of State, which must contain:

- a. The name by which such corporation is to be known, which shall begin with the word 'The' and end with the word 'bank' or 'company.'
- b. The place where its business is to be transacted, designating the particular city, village or township.
- c. The purpose for which it is formed, whether that of a commercial bank, savings bank, trust company, or a combination of two or more or all, of such classes of business, or a special plan bank, as provided in Section 180 of this act.
- d. The amount of its capital, which shall be divided into shares of one hundred dollars each."

Section 710-180 of the Code, authorizing the formation of special plan banks, is as follows:

"Any bank organized and doing business as a special plan bank, and which by the terms of its contract with its depositors provides for the receipt of deposits which are not payable unconditionally upon demand or at a fixed time, may in the case of any loan made upon the security of the character and earning capacity of the borrower and of the co-makers or endorsers on the borrower's note evidencing the loan, in addition to discounting interest at the rate allowed by law, require such borrowers as additional security for such loan to make equal periodical deposits in such bank during the period of the loan, with or without an allowance of interest on such deposits, and such transaction shall not be deemed usurious. A special plan bank shall keep only the same reserve as is required of savings banks against all deposits which by the contract with the depositor are not to be paid upon demand or at a fixed time, and no reserve shall be required against deposits hypothecated to secure indebtedness of the depositor to the bank."

These two sections are the only portions of the banking act having reference to special plan banks and by virtue of which the so-called Morris Plan Banks function.

Prior to the enactment of Section 710-180, this office, in Opinions of the Attorney General for 1916, at page 1401, held that the Morris Plan Bank method of loaning money was not authorized by the laws of the State. Following that opinion the section was enacted and at the same time Section 710-41 was enacted, replacing a prior section and including authorization for the formation of a special plan bank. The language of Section 710-41 is rather peculiar in that the first paragraph thereof apparently only authorizes the incorporation of a commercial bank, a savings bank, a trust company or a bank having departments for two or more or all of such classes of business. When, however, the latter portion of the section is examined, it is found that, in the purpose clause of the Articles of Incorporation, it may be stated that the purpose of the corporation is that of "a commercial bank, savings bank, trust company or a combination of two or more or all of such classes of business or a special plan bank as provided in Section 180 of this act." In my opinion, a careful reading of paragraph c of Section 710-41 is dispositive of your questions. The Legislature has clearly recognized the right of one corporation to combine the functions of a commercial bank, savings bank and trust company. You will observe, however, that the reference to special plan banks is made in the alternative to the other classes of business mentioned. Had it been the legislative intent to permit a combination of the ordinary banking businesses with that of a special plan bank, it could easily have so expressed by incorporating the reference to a special plan bank along with a commercial bank, savings bank and trust company in the first part of the sentence. To construe this language as permitting such a combination would be to make the sentence read as follows: "The purpose for which it is formed, whether that of a commercial bank, savings bank, trust company, special plan bank, as provided in Section 180 of this act, or a combination of two or more or all of such classes of business." To permit such a transposition of the language of the sentence would, in my opinion, be transcending the bounds of judicial construction. In my view, the Legislature has clearly indicated that banking under a special plan is a separate function which shall not be combined with the ordinary methods of banking. Accordingly, I am of the opinion that a commercial bank, savings bank, trust company or a combination of two or more or all of such classes of business may not engage in the special plan banking authorized by Section 710-180 of the General Code.

For like reasons I am also of the opinion that a special plan bank, incorporated as such and functioning under Section 710-180, may not engage in the business of a commercial bank, savings bank, trust company or combination of two or more of such classes of business.

In reaching my conclusions I have not overlooked the provisions of the general corporation act, particularly Sections 8623-3 and 8623-4, which authorize the formation of corporations under general law with dual purposes. The general corporation law is inapplicable by its express terms (General Code 8623-132) where special provision is made in the General Code for the incorporation of corporations formed for specified purposes. There being express provision found in the banking laws for the incorporation of banks, in my opinion the provisions of the general corporation act with respect to the purposes for which such corporations may be formed are inapplicable.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2258.

BOARD OF EDUCATION—CERTIFICATE OF CLERK SHOWING APPROPRIATION OF FUNDS UNNECESSARY TO TEACHER'S CONTRACT.

SYLLABUS:

A certificate of the clerk of a board of education to the effect that the amount required to meet contracts made by the board of education with teachers "has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any encumbrances" is not necessary.

COLUMBUS, OHIO, June 20, 1928.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

"I respectfully request your opinion on the following:

A board of education now employing teachers for the school year 1928-1929 is in uncertainty whether the funds necessary to pay these teachers to December 31, will be available during the fiscal year 1928. Is the clerk of the board of education in the contracts drawn up for presentation to these teachers obliged to certify that the necessary funds are in hand or in process of collection? In fact, is the clerk's certificate necessary to a teacher's contract, and is it necessary to the action taken by the board in employing the teacher?"

Sections 5625-1 and 5625-33, General Code, as amended by the 87th General Assembly (112 O. L. 391 and 406) read in part as follows:

Sec. 5625-1. "The following definitions shall be applied to the terms used in this act:

(a) 'Subdivision' shall mean any county, school district, except the county school district, municipal corporation or township in the state.

* * *

(i) 'Taxing unit' shall mean any subdivision or other governmental district having authority to levy taxes on the property in such district or issue bonds which constitute a charge against the property of such district including