

OPINION NO. 77-004

Syllabus:

Certificates of deposit issued by a bank are authorized investments of a domestic legal reserve life insurance company pursuant to R.C. 3907.14(O) (4).

To: Harry V. Jump, Supt. Ohio Dept. of Insurance, Columbus, Ohio
By: William J. Brown, Attorney General, January 28, 1977

I have before me your request for my opinion, the substance of which reads as follows:

A domestic reserve life insurance company organized pursuant to Chapter 3907 of the Ohio Revised Code has invested a substantial portion of its capital, surplus, and other accumulations in certificates of deposit issued by banks. The company seeks to admit as an asset these investments on the basis they are qualified "evidences of indebtedness" pursuant to Section 3907.14(O) (4) of the Ohio Revised Code on a report of its financial condition to the Department of Insurance, which is conducting an examination of the company pursuant to Section 3901.07 of the Ohio Revised Code.

* * *

Your opinion is requested as to whether Section 3907.14(O) (4) permits recognition of certificates of deposit issued by a bank as an "evidence of indebtedness" of a solvent incorporated company.

R.C. 3907.14 provides for investments by domestic life insurance companies, using the following language:

The capital, surplus, and all accumulations of every domestic life insurance company shall be invested as follows:
(Emphasis added.)

That section then proceeds to enumerate authorized investments. In statutory construction the word "may" is to be construed as permissive, and the word "shall" as mandatory, unless there appears a clear and unequivocal legislative intent that those words receive a construction other than their ordinary usage. Dorrian v. Scioto Conserv. Dist., 27 Ohio St. 2d 102 (1971). Thus, the mandatory language contained in R.C. 3907.14 evinces a legislative intent to enumerate the permissible investments available to a domestic life insurance company, and to limit investments to those expressly authorized.

Your specific question is whether R.C. 3907.14(O) (4) permits

recognition of certificates of deposit issued by banks. That provision reads as follows:

(4) In the bonds, notes, debentures, or other evidences of indebtedness of solvent incorporated companies existing under the laws of the United States or of any state thereof, provided that such corporation has not defaulted in payment bonds, notes, debentures, or other evidences of indebtedness during the five years immediately preceding the date of purchase, and provided such corporation's average annual net earnings before provision for federal income taxes for not less than five fiscal years preceding such purchase are at least three times the amount required to pay interest on its outstanding funded debt; (Emphasis added.)

The words "solvent incorporated companies" and "other evidences of indebtedness" are broad and would on their face include certificates of deposit issued by banks. In this regard it may be noted that R.C. 3907.14(M) specifically authorizes investments in "certificates of deposit or other evidence of indebtedness of a building and loan association." (Emphasis added.) With respect to the character of banks, they are defined in R.C. 1101.01(B) for purposes of R.C. Chapter 1101 through 1129 as follows:

(B) "Bank" means any corporation soliciting, receiving, or accepting money or its equivalent on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, passbook, note, receipt, ledger, card, or otherwise, and also includes commercial banks, savings banks, trust companies, and special plan banks, but does not include any building and loan association, credit union, or federal savings and loan association. (Emphasis added.)

In R.C. 1.42 the General Assembly codified a well-settled and basic rule of statutory construction that words and phrases are to be given their common meaning unless the sense of the statute requires otherwise. Where the common and ordinary meaning of words and phrases used in a statute are clear and unambiguous, there is no basis for further resort to rules of statutory construction. Cleveland Trust Co., v. Eaton, 21 Ohio St. 2d 129 (1970); Sears v. Weimar, 143 Ohio St. 312 (1944). Such is the case here. Nothing in R.C. 3907.14 suggests an intention by the General Assembly, or even a reason, to exclude certificates of deposit issued by banks from those investments authorized pursuant to R.C. 3907.14(O)(4).

Therefore, in specific answer to your question, it is my opinion and you are so advised that certificates of deposit issued by a bank are authorized investments of a domestic legal reserve life insurance company pursuant to R.C. 3907.14(O)(4).