outstanding anticipatory notes issued by the board of education. In the absence of such statutory requirement I am of the opinion that the "advance draw" in question may be used for purposes other than the payment of such notes if the board of education in the use of its discretion deems it to be advisable to use such funds for other purposes.

Section 2692, General Code, which authorizes the advancement of tax funds by the county treasurer to the taxing authorities, authorizes the county treasurer to withhold or retain "amounts that may be needed to make such payments of the obligation of the local political subdivision or taxing districts as are required by law to be paid directly by the county authorities."

It might be argued with considerable force, that Section 2293-4, General Code, is in pari materia with such Section 2692, General Code, and would prevent the county auditor and county treasurer from making an advance in such amount as will reduce the remaining tax funds to be accounted for to an amount less than twice the aggregate amount of such anticipatory borrowing; however, such question is not presented by the facts in your inquiry, and no opinion thereon is herein expressed. Assuming such method of construction to be correct, there would yet be no language in such sections which would authorize the county treasurer to withhold the $33,000 in question, since such limit would not thereby be reached.

In specific answer to your inquiries it is my opinion that:

1. When a board of education has borrowed money in anticipation of a tax settlement pursuant to the provisions of Section 2293-4, General Code, and thereafter, but before the maturity date of the notes issued in evidence of such borrowing and before the date of the semi-annual settlement between the county treasurer and the county auditor, the county makes an advance payment of taxes to such board of education which does not reduce the unpaid balance of anticipated receipts from the next semi-annual settlement of taxes below twice the aggregate amount of the anticipatory notes, debt charges and other advances, there is no mandatory duty on such board of education to anticipate the maturity of such notes from such advance payment.

2. In determining the amount of an advance payment to a board of education by the county treasurer pursuant to the provisions of Section 2692, General Code, under like circumstances, there is no duty on the county treasurer to make deductions therefrom for such anticipatory indebtedness created by such board of education.

Respectfully,
JOHN W. BRICKER,
Attorney General.

712.

BANKS—DIVULGING INFORMATION REGARDING BANK OPERATING ON RESTRICTED BASIS TO PRIVATE INDIVIDUALS PROHIBITED WHEN—BANK OPERATING ON RESTRICTED BASIS AND LIQUIDATING BANK DISTINGUISHED—BAKER ACT DISCUSSED.

SYLLABUS:

The officers mentioned in section 710-35 of the General Code, are prohibited from divulging information concerning a bank operating upon a restricted basis, whether under the control of a conservator or not, to private individuals, other than

stockholders, or to voluntary organizations and committees, such information having been obtained in the course of an examination of the bank.

COLUMBUS, OHIO, April 25, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—You have requested my opinion as to your liability under section 710-35 of the General Code (as amended by House Bill No. 661, 90th General Assembly) for divulging to private persons and voluntary committees facts and information obtained by you in examining banks now operating upon a restricted basis. You state your inquiry with particular reference to a member bank of the Federal Reserve System not licensed to perform normal banking functions and which has been operating under an order of your department restricting the payment of its liabilities to five per cent. Since the making of your request, a conservator has been appointed for the bank in question by virtue of section 710-88a enacted as part of the Baker Act (H. B. 661, 90th General Assembly).

Stated generally, I understand your question to be whether the officers mentioned in section 710-35, General Code, may, without incurring criminal liability under that section, divulge to private persons and voluntary committees and organizations information concerning a bank operating upon a restricted basis —whether under the control of a conservator or not—but not in liquidation under section 710-89 (Am. H. B. 657), such information having been obtained in the course of an examination of the bank.

Section 710-35, as amended by the Baker Act, reads:

> "Whoever, being the superintendent of banks, a member of the banking advisory board, a deputy, assistant, clerk, examiner or attorney examiner in the employ of the superintendent of banks, fails to keep secret the facts and information obtained in the course of an examination, except when the public duty of such officer or employe requires him to report upon or take official action regarding the affairs of the person, partnership, corporation, company, society or association so examined, or wilfully makes a false official report as to the condition of such person, partnership, corporation, company, society or association, shall be fined not more than five hundred dollars or imprisoned in the penitentiary not less than one year nor more than five years, or both. Nothing in this section shall prevent the proper exchange of information relating to banks and the business thereof, with the representatives of the banking departments of other states, with representatives of the federal reserve banks, with the national bank authorities, or with clearing house association examiners.
>
> Any official, violating any provision of this section, in addition to the penalties therein provided shall be removed from office and be liable, with his bondsmen, in damages to the person or corporation injured by the disclosure of such secrets.
>
> Nothing in this section shall prevent the superintendent of banks in possession of the business and property of a bank, pursuant to the provisions of section 710-89 of the General Code, from disclosing any facts or information, however obtained, when the banking advisory board deems any such disclosure to be for the best interests of the depositors and creditors of such bank."

In an opinion of this office directed to one of your predecessors and re-

ported in Annual Report of the Attorney General, 1914, volume II, page 1649, it was held that under section 12898 (now section 710-35), the officers therein mentioned could not disclose information obtained in the course of bank examinations to clearing house examiners and auditing committees. This language appears in that opinion:

> "This provision is essential to the public welfare and cannot be too strictly followed. The exception in the case of exchanging information between your department and the banking departments of other states and national bank authorities precludes any other exception; that is, you can only divulge facts and information obtained in the course of examinations to representatives of the banking departments of other states, national bank authorities *or when your duty as superintendent, or the duty of any of your assistants or examiners, requires you to report to some other state or county official or to take official action which makes necessary the disclosure of such facts.*
>
> Clearing house examiners and auditing committees are not representatives of banking departments of other states nor are they national bank authorities; and therefore, though there may be many reasons for the exchange of information, and checking up reports with the representatives of different clearing houses, permission to do so not having been granted by statute, it is prohibited."

The language italicized evidently refers to the express exception in section 710-35 that "when the public duty of such officer or employe requires him to report upon or take official action regarding the affairs of the" bank, he need not keep secret facts obtained in the course of an examination. The former opinion of this office expressed the view that the public duty to report is only the duty to report to some state or county official. In my opinion, the public duty to report mentioned in the section does not impose a duty to divulge information about banks to individuals who are not stockholders, or to voluntary organizations and committees.

It appears from your request that the persons seeking information concerning the amount of deposits, withdrawals from accounts of officers, directors and stockholders, debts of officers, salaries, trust deposits and other information concerning certain restricted banks, rely upon an opinion of this office, reported in Opinions of the Attorney General, 1915, volume I, page 151. That opinion held that the statute does not prohibit the divulging of information regarding a bank in process of liquidation, and distinguishes such a bank from "a going concern." The following language appears in that opinion at page 152:

> "The reason for this legislative enactment forbidding the superintendent of banks and bank examiners to reveal facts and information contained in their report of the examination of banks was clearly for the protection of the bank and its business as a going concern. The Albany State Bank was declared insolvent prior to the institution of this suit and its liquidation is now practically completed, therefore, the reason of the rule of the statute is removed, and it is inconceivable that a bank which has been closed and practically liquidated would receive any injury by a public revelation of its business secrets."

This opinion and the reasoning therein have application to banks in the

process of liquidation under section 710-89. A bank operating on a restricted basis is still "a going concern." It is not performing its usual banking functions, but until it is taken over by the superintendent for liquidation, it is still operating as a bank. Banks thus operating have been authorized to pay out a percentage of deposits and to accept and pay out deposits in so-called trust accounts.

Section 710-88a, authorizing the appointment of conservators, provides in part:

> "The conservator so appointed shall take possession of the business and property of such bank and under the supervision of the superintendent and subject to such limitations as the superintendent may from time to time impose, shall have and exercise in the name and on behalf of such bank all the rights, powers and authority of the officers and directors of such bank and all voting rights of the shareholders thereof and may continue its business in whole or in part with a view to conserving its business and assets pending further disposition thereof as provided by law."

It is clear from this section that the function of a conservator is to carry on in whole or in part the business of a bank which is a going concern. This section further provides that the Superintendent of Banks "may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business, subject to such terms, conditions, restrictions and limitations as he may prescribe." A bank which is being *operated* by a conservator is clearly distinguishable from one which is being *liquidated,* and this distinction renders inapplicable to a bank of the former class, the reasoning set forth in the 1915 opinion of this office with reference to a bank of the latter class. The last paragraph of section 710-35, was added by the Baker Act. This provision permits the Superintendent of Banks in possession of a bank for liquidation under section 710-89, to disclose facts or information "when the banking advisory board deems any such disclosure to be for the best interests of the depositors and creditors of such bank." It will be noted that even in the case of a bank in the process of liquidation, it is discretionary with the banking advisory board to withhold disclosure of the affairs of the bank. Had the legislature intended the main provision of section 710-35 to be inapplicable to banks operating on a restricted basis, it would certainly have expressly included such banks within the exception. Having expressly excluded banks in liquidation, without mentioning restricted banks, the legislature by implication included banks of the latter class within the terms of the statute. *Expressio Unius est exclusio alterius.*

Specifically answering your inquiry, I am of the opinion that the officers mentioned in section 710-35 of the General Code are thereby prohibited from divulging information concerning a bank operating upon a restricted basis, whether under the control of a conservator or not, to private individuals, other than stockholders, or to voluntary organizations and committees, such information having been obtained in the course of an examination of the bank.

As I understand your request, those desiring the information in question are not stockholders. Under section 710-73, the books and records of every bank "except books and records of deposit and trust" shall be open to the inspection of stockholders at all reasonable times.

Respectfully,
JOHN W. BRICKER,
Attorney General.