

by all the circumstances surrounding the removal of such trustee from the township and from which the true intention of such trustee may be ascertained.

Therefore, in the instant case you are advised that it is my opinion that if it is ascertained that the trustee in question has a bona fide intention of returning to the township in which he is serving as trustee then and in that event, he may continue to hold such office during the time of his physical absence from such township.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

821.

STATE BANK—FUNDS—MAY INVEST IN “BRIDGE REVENUE BONDS” ONLY WITH APPROVAL, SUPERINTENDENT OF BANKS—MAY INVEST WITHOUT SUCH APPROVAL IN BONDS OR OTHER OBLIGATIONS WITHIN PURVIEW OF SECTIONS 1078-61, 2332-7, 5240-4 AND 7923-1 G. C., I. E., HOUSING AUTHORITY BONDS, PUBLIC INSTITUTIONAL BUILDING AUTHORITY BONDS, ARMORY BUILDING AUTHORITY BONDS, UNIVERSITY DORMITORY OBLIGATIONS.

SYLLABUS:

1. *By the express terms of Section 1084-10, General Code, as amended in Amended Senate Bill No. 288, 93rd General Assembly, a state bank may invest its funds in “Bridge Revenue Bonds” issued under authority of said section, only with approval of the superintendent of banks.*

2. *A state bank may invest its funds in the kinds of bonds or other obligations referred to in Section 1078-61, General Code (Housing Authority Bonds); Section 2332-7, General Code (Public Institutional Building Authority Bonds); Section 5240-4, General Code (Armory Building Authority Bonds), or Section 7923-1, General Code (University Dormitory Obligations), without the approval of the superintendent of banks.*

COLUMBUS, OHIO, June 28, 1939.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: I have your letter requesting my opinion as to the power and authority of a state bank to invest its funds in the several kinds of bonds and obligations enumerated in such letter without first obtaining the approval of the Superintendent of Banks. Your letter reads as follows:

“Sub-paragraph (d) of Section 710-111 of the General Code, forbids a bank to invest its funds in bonds or other obligations which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, unless such investment be approved by the Superintendent of Banks.

Certain sections of the General Code, exclusive of the Banking Code (Sections 710-1 to Section 714 inclusive of the General Code) authorize state banks to invest their funds in bonds and other obligations payable solely through revenues collected. I make particular reference to the following sections :

Sec. 1078-61, General Code (State Housing Authority bonds) ;

Sec. 1084-10, General Code (State of Ohio Bridge Commission bonds) ;

Sec. 2332-7, General Code (Public Institutional Building Authority bonds) ;

Sec. 5240-4, General Code (Armory Building Authority bonds) ; and

Sec. 7923-1, General Code (Dormitory Bonds of certain Universities).

I would appreciate your opinion as to whether or not a state bank may invest its funds in bonds or other obligations issued under the authority of any one or more of the sections of the General Code last above referred to without first obtaining the approval of the Superintendent of Banks.”

I find that Sections 710-111, 1084-10, 2332-7 and 5240-4, General Code, were each amended by the 93rd General Assembly, and I am informed by your Division that my opinion is desired with reference to these sections as amended.

While Section 710-111, General Code, was amended in Amended Senate Bill No. 71 (filed in the office of the Secretary of State on April 24, 1939 and, therefore, effective ninety days after such date), since we are only here concerned with sub-paragraph (d), which was not changed, it is unnecessary to notice the amendments. The pertinent parts of this section read :

“Sec. 710-111. A bank may invest its funds in the following securities :

* * *

(d) Bonds or other obligations of any county, town, township, city, school district, improvement district or sewer

district, or *other organized* or political subdivision in this state, provided, however, that no investment shall be made in any special assessment or improvement bonds or other bonds or obligations which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, unless such investment be approved by the superintendent of banks. * * *” (Italics ours.)

This section is a part of what is commonly called the “Bank Act” or “Banking Code” and contains general provisions and limitations governing the investment of its funds by a state bank in the bonds or obligations of an organized or political subdivision of this State of the kind specified in the section. That is to say, the provisions of this section are controlling in the cases particularly referred to in your letter, unless there be some special provision otherwise. As stated in 59 C. J. 1056:

“When there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a minute way, will prevail over the general statute. * * *”

The above language was quoted with approval by the late Judge Jones (from 35 Cyc. 1151) at page 489 of the case of *State ex rel. Crabbe, Atty. Gen., v. City of Cleveland*, 115 O. S. 484 (1926).

At page 288, of his Commentary on the Interpretation of Statutes, Endlich states the rule thus:

“* * * According to a familiar, everyday maxim, an exception is not a negation of a general rule. At least, it is so only to the extent of the exception; and if a statute recognizes the existence of the general laws, and creates an exception from them, it cannot be deemed repugnant to the former so as to repeal it. Hence, if there are two acts, or two provisions in the same act, of which one is special and particular, and clearly includes the matter in controversy, whilst the other is general and would, if standing alone, include it also; and if reading the general provision side by side with the particular one, the inclusion of that matter in the former would produce a conflict between it and the special provision,—it must be taken that the latter was designed as an exception to the general provision; * * *”

This brings us to the several other sections particularly enumerated in your letter, which will be separately considered in the order set forth.

1. Section 1078-61, General Code, reads as follows:

“All funds, public or private, trust or otherwise, may be invested in any bonds or other obligations of a housing authority, and such bonds or other obligations may be accepted as satisfactory security for all public deposits, any thing in any other law to the contrary notwithstanding; it being the purpose of this section to authorize the investment in bonds or other obligations of a housing authority of all sinking, insurance, retirement, compensation, pension, and trust funds, whether owned or controlled by private or public persons or officers, *and funds owned by, or held on deposit in, any banking institution or building and loan association.*” (Italics ours)

This section was first enacted in Amended House Bill No. 788, passed as an emergency measure by the 92nd General Assembly on January 25, 1938. As then enacted the clause above italicized was not contained in the section.

On May 18, 1938, in Opinion No. 2488, my predecessor in office held as follows:

“1. Section 1078-61, General Code, does not modify or broaden the investment provisions of the Banking Act and the Building and Loan Acts to permit investments in bonds or other obligations of a local housing authority. Title Guaranty and Trust Companies having to comply with the laws pertaining to savings banks or commercial banks to become eligible as a state depository, are likewise prohibited from investing in bonds or other obligations of a local housing authority.”

This conclusion was reached because the “purpose clause” of the section authorized and limited “the investment in bonds or other obligations of a housing authority of all sinking, insurance, retirement, compensation, pension and trust funds,” and the capital and surplus of a state bank are not funds of the six kinds enumerated.

On July 2, 1938, after the rendition of the above opinion the General Assembly amended Section 1078-61 in Amended Senate Bill No. 497, passed as an emergency measure, by adding to the section the words:

“and funds owned by, or held on deposit in, any banking institution or building and loan association,”

thus clearly evincing an intention to designate an additional type of security in which a state bank might invest its funds, to those formerly set forth

in this section as well as to those specified in Section 710-111, General Code.

2. Section 1084-10, General Code, having to do with "Bridge Revenue Bonds" requires little consideration. This section was amended in Amended Senate Bill No. 288 passed by the 93rd General Assembly as an emergency measure on June 2, 1939. This section now reads in part:

"Sec. 1084-10. The state bridge commission and the bridge commission of any county or city is hereby authorized to provide by resolution for the issuance of bridge revenue bonds of the state or of such county or city for the purpose of paying the cost as hereinabove defined of any one or more such bridges, which resolution shall recite an estimate of such cost, the principal and interest of which bonds shall be payable solely from the special fund herein provided for such payment. * * * Such bonds shall be lawful investments of banks, savings banks *and* trust companies *with approval of the superintendent of banks,* * * *"

the words italicized, among others, being added to the section. Obviously, since this amendment, a state bank may *not* invest in "Bridge Revenue Bonds" without approval of the superintendent of banks.

3. Section 2332-7, General Code, having to do with bonds issued by the public institutional building authority, was also amended by the 93rd General Assembly in an act passed as an emergency measure (Am. S. B. No. 313, filed June 7, 1939). As amended that part of this section with which we are here concerned reads as follows (the words italicized indicating the changes):

"* * * Such bonds shall be lawful investments of banks, savings banks, *insurance companies*, trust companies, trustees, and of the sinking funds of municipalities, *school districts*, counties, *and the commissioners of the sinking fund of Ohio, the industrial commission of Ohio, the state teachers' retirement system, the public employes' retirement system, state public school employes' retirement system* and shall also be acceptable as security for the deposit of public moneys." (Italics ours.)

From the wording of this section both before and after the last amendment it seems clear that the Legislature intended that bonds issued by the public institutional building authority should be "lawful investments" of banks, savings banks and trust companies, and that a state bank may invest its funds in such securities, the approval of the superintendent of banks not being required. That is, the Legislature has added to the types of securities listed in Section 710-111, General Code, "Public Institutional Building Authority Bonds."

4. Section 5240-4, General Code, provides that bonds issued by the armory building authority "shall be lawful investments of banks, savings banks, (and) trust companies." And for the reasons above suggested, a state bank may also invest its funds in this type of security.

5. Section 7923-1, General Code, authorizes the boards of trustees of certain state universities "to issue notes or other written instruments" evidencing indebtedness incurred in constructing, equipping, maintaining and operating dormitories upon their respective campuses, such indebtedness, however, not to "be a claim against or a lien upon any property of the State of Ohio or any property of or under the control" of the boards of trustees, excepting only "such part of the receipts of the operation of any dormitories * * * as the said boards of trustees may respectively pledge to secure the payment of any such indebtedness." This section both before and after its amendment by the 93rd General Assembly (S. B. No. 39, filed February 24, 1939), reads in part:

"* * *

Such notes or other written instruments shall be lawful investments of banks, savings banks, trust companies, * * * and shall be acceptable as security for the deposit of public moneys."

Here again, and for the same reasons, it must be concluded that the Legislature intended to and did authorize state banks to invest their funds in the notes or other obligations issued in accordance with the provisions of this section.

It will be noted that I have not found it necessary to determine whether any of the five types of securities herein discussed are bonds "or other obligations of any state or territory of the United States" within the meaning of sub-paragraph (c) of Section 710-111, General Code, or whether any of the authorities authorized to issue such bonds or other obligations are "organized * * * subdivisions in this state", within the meaning of sub-paragraph (d) of this section, *supra*. Such a determination has been unnecessary, because as already indicated it is my opinion that, with the exception of all "Bridge Revenue Bonds" in the cases under consideration the Legislature has seen fit expressly to provide that such bonds or obligations are lawful investments of state banks, there being no requirement that the superintendent of banks must approve. As to "Bridge Revenue Bonds" the last General Assembly saw fit expressly and plainly to provide that such bonds should be lawful investments of banks, only "with approval of the superintendent of banks."

And here an additional reason for the conclusion herein reached may be given. Each of the five sections of the General Code referred to in your letter were enacted by the Legislature with a "full knowledge of the existing condition of the law and with reference to it" (59 C. J., 1038), i. e., with full knowledge of the provisions of Section 710-111, General

Code. When passing the sections in question no provisions were incorporated requiring the approval of the superintendent of banks or containing any other conditions or limitations, except in the case of "Bridge Revenue Bonds", where the approval of the superintendent of banks is expressly required in the last amendment to Section 1084-10, General Code. This is especially significant, when it is remembered that at the same session of the 93rd General Assembly, Sections 710-111, 2332-7 and 7923-1, General Code, were also amended, no pertinent change being made in Section 710-111 and no such condition being included in either Section 2332-7 or Section 7923-1.

"The rule that statutes in *pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature; * * *" (59 C. J., 1053.)

Specifically answering your questions, it is my opinion that, for the reasons above given:

1. By the express terms of Section 1084-10, General Code, as amended in Amended Senate Bill No. 288, 93rd General Assembly, a state bank may invest its funds in "Bridge Revenue Bonds" issued under authority of said section, only with approval of the superintendent of banks.

2. A state bank may invest its funds in the kinds of bonds or other obligations referred to in Section 1078-61, General Code (Housing Authority Bonds); Section 2332-7, General Code (Public Institutional Building Authority Bonds); Section 5240-4, General Code (Armory Building Authority Bonds), or Section 7923-1, General Code (University Dormitory Obligations), without the approval of the superintendent of banks.

In connection with any bonds or obligations that might be issued by the public institutional building authority, your attention is invited to the fact that an action is now pending in the Supreme Court of Ohio involving the constitutionality of the act creating this authority. Should the act in question be held unconstitutional the validity of any bonds or obligations attempted to be issued by this authority will be affected.

Respectfully,

THOMAS J. HERBERT,
Attorney General.