

5502.

BANK AND TRUST CO.—MAY CREATE FUND FOR MEDICAL
AND HOSPITAL SERVICE FOR EMPLOYEES—FUNDS
MAY NOT BE INVESTED IN BANK'S OWN STOCK.

SYLLABUS

1. *Banks and trust companies have only such powers as are expressly conferred upon them by their charters and by statute, together with such powers as may fairly be implied from those expressly granted. Ulmer v. Fulton, 129 O. S., 323.*

2. *An Ohio banking and trust company has implied power to create a fund from surplus earnings for the purpose of providing necessary medical and hospital care for its employees who are financially unable to procure such services.*

3. *Where the bank holds title to such fund which is administered by one of its departments, it is prohibited by Section 710-114, General Code, from investing any part of the fund in the bank's own stock.*

COLUMBUS, OHIO, May 11, 1936.

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

DEAR SIR: I have your request for my opinion, which reads as follows:

“Several years ago a state bank and trust company, through its earnings, created and established a fund for the purpose of assisting its employees who might become ill and unable to pay physician and hospital bills. This fund has become periodically increased and at the present writing consists of a substantial amount. The action of the Board of Directors in creating this fund and increasing the same was approved at a meeting of its shareholders. 119,206 shares out of 162,000 shares issued, were voted in the affirmative.

The fund thus created, which is limited in advancements by the bank to \$25,000, is being administered by the Trust Committee of this bank.

After the creation of said fund, said bank declared a stock dividend and after contribution was made to shareholders, several hundred shares remained and were sold to the Trust Committee as an investment for this fund, said shares of stock being paid for out of said fund by said Trust Committee. This action likewise was approved at a meeting of its shareholders.

137,357 shares out of 162,000 shares issued were voted in the affirmative.

Upon a recent examination of the Trust Department of this bank, my examiner questioned the legality of this transaction in so far as the purchase of stock of the bank was concerned, he being of the opinion that such purchase in effect constituted an acquisition and holding by the bank of its own stock."

Your trust examiner has further advised me that the fund in question was charged to the bank's surplus account and transferred to the books of the trust department for administrative purposes by action of the board of directors, which action was ratified by the stockholders as stated in your letter. The item is no longer carried as surplus. No trust agreement or indenture was executed, nor has any other information been furnished me, indicating that a trust was established. Your examiner further advises that the entire fund has been invested in the bank's own stock.

The initial question presented by your inquiry is whether a banking corporation has the power to use its surplus earnings in the creation of a fund to pay medical and hospital expenses of its employees who might require such services although unable to pay for them.

In the case of *Ulmer v. Fulton*, 129 O. S., 323, it was held as disclosed by the first branch of the syllabus:

"Banks and trust companies have only such powers as are expressly conferred on them by their charter and by statute, or such as may fairly be implied from those expressly given."

See also, *Texas & Pacific Ry. Co. v. Pottorff*, 291 U. S. 245; *Sneeden v. City of Marion*, 64 F. (2nd), 721, affirmed *City of Marion v. Sneeden*, 291 U. S., 262.

Section 710-46, General Code, provides for the recording of the articles of incorporation of a banking corporation.

Section 710-47, General Code, reads:

"When such articles of incorporation are so recorded, the persons who subscribe them, their associates, successors and assigns, by the name designated therein, shall become a body corporate with succession, and, as such, shall have power:

- (a) To adopt and use a corporate seal, and to alter it at will;
- (b) To contract and be contracted with;
- (c) To sue and be sued;

(d) To adopt regulations for the government of the corporation, not inconsistent with the constitution and laws of this state;

(e) To do all needful acts, to carry into effect the objects for which it was created."

The creation of the fund does not appear to be inconsistent with the Constitution or laws of the state. The question then arises whether the creation of the fund was a needful act to carry into effect the objects for which the corporation was created.

Examination reveals no provision of statute specifically authorizing the creation of such fund. Under the decisions above cited, it is necessary to determine whether that power may be fairly implied from the authority expressly given by statute.

In addition to Section 710-47, *supra*, there are numerous sections of the banking act (Sections 710-1 to 710-189, inclusive, General Code) conferring power and imposing liability upon banking corporations. I find no specific provision from which the power in question may be inferred, unless paragraphs (d) and (e) of Section 710-47, General Code, can be so considered. However, without reviewing in detail the numerous sections of the banking act, it may be stated that Ohio banking corporations possess such incidental powers as may be reasonable and proper in order to conduct the banking business authorized by the statute.

With respect to implied powers, the following appears in 4 *Michie, Banks and Banking* (1931), pp. 7-8:

"In the absence of any denial thereof in the charter, a bank has certain implied powers which are as complete as if they were expressly given. Thus, a bank has implied authority to pay a reasonable attorney's fee to protect its rights in a suit in which the accuracy of its stock records is involved; to employ an attorney to bring quieting title action; to answer questions as to an employee's record in existing employment; to pay a reasonable premium to a surety company for bond to secure deposit of county funds; to become a 'depositor' in another bank; to lend money to customers on deposit; and to engage in such business as is necessary to preserve property on which it holds a lien. A state bank may issue and deliver a bond to protect a checking account of deposit as an incidental power. And the power of a title insurance company to issue an obligation for deposit fairly implies the power to pledge securities therefor when necessary to safeguard the return of the deposit. But a bank has no implied power to become custodian of a will."

It is believed that the health of its employees has a reasonable relation to the business of the corporation. Loss of time from work by trained and efficient employees because of the lack of medical or hospital care may have a direct effect upon the business. I therefore conclude that an Ohio banking corporation has authority to create from its surplus earnings a fund to provide such services for its employees who require them but who are financially unable to obtain them.

Having so concluded, it becomes necessary to determine whether the fund can legally be invested in the bank's own stock.

Section 701-114, General Code, provides that no bank shall be the purchaser or holder of any of the shares of its capital stock, unless such purchase be necessary to prevent loss upon a debt previously contracted in good faith.

Assuming, as I must under the facts given, that title to the fund was not transferred either to the trust department or to the members of the trust committee as individuals in the capacity of trustee, the fund remained the property of the bank. This being true, the shares purchased with it were purchased by the bank in violation of Section 710-114, General Code.

In the case of *Ulmer v. Fulton*, 129 O. S., 323, Judge Zimmerman said at pp. 333-334:

“Under the laws of Ohio, a banking institution such as The Commercial Savings Bank & Trust Company, with a single board of directors, is one corporate entity, no matter how many departments it may form, either as a matter of convenience in transacting its business, or to meet requirements prescribed by law.”

It is thus immaterial that the item in question was carried upon the books of the trust department or that the investment was handled by the trust committee. The fund still belonged to the bank and the bank was the purchaser of the shares.

Summarizing, it is my opinion:

1. Banks and trust companies have only such powers as are expressly conferred upon them by their charters and by statute, together with such powers as may fairly be implied from those expressly granted. *Ulmer v. Fulton*, 129 O. S., 323.

2. An Ohio banking and trust company has implied power to create a fund from surplus earnings for the purpose of providing necessary medical and hospital care for its employees who are financially unable to procure such services.

3. Where the bank holds title to such fund which is administered by one of its departments, it is prohibited by Section 710-114, General Code, from investing any part of the fund in the bank's own stock.

Very truly yours,

JOHN W. BRICKER,
Attorney General.

5503.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$5,000.00.

COLUMBUS, OHIO, May 11, 1936.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

5504.

APPROVAL—APPLICATION FOR ADJUSTMENTS OF CURRENT AND DELINQUENT RENTALS ON MIAMI AND ERIE CANAL LAND OF THE PENNSYLVANIA RAILROAD COMPANY; ANNIE E. ARMSTRONG; THE CINCINNATI & LAKE ERIE RAILROAD COMPANY; LOUISE ERNST.

COLUMBUS, OHIO, May 11, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certain findings made by your immediate predecessor in office, Hon. T. S. Brindle, with respect to certain adjustments of current and delinquent rentals upon applications therefor filed respectively by certain lessees of abandoned Miami and Erie Canal lands, under the authority of House Bill No. 467, 115 O. L., 512.

The proceedings here in question, designated as to the respective lessees making such applications and as to the reductions made by your department in the amounts of current and delinquent rentals, are:

1. The Pennsylvania Railroad Company (M&E Lease No. 240), current rental reduction from November 1, 1935, to November 1, 1936, from \$854.64 to \$712.20.