

2823.

TRUST—SAVINGS OR NATIONAL BANK MUST QUALIFY TO DO TRUST BUSINESS WITHIN STATE TO RECEIVE SECURITIES UNDER SECTION 10506-23, GENERAL CODE.

SYLLABUS:

A savings or national bank in order to legally receive securities under the provisions of section 10506-23, General Code, must qualify to do a trust business in this state and must comply with the provisions of section 710-150, General Code.

COLUMBUS, OHIO, June 16, 1934.

HON. CHARLES W. LYNCH, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Probate Judge of Monroe County, Ohio, has presented the following question upon which we respectfully request your opinion:

‘Section 10506-23 of the General Code of Ohio recites that the Probate Court may direct that any certificate of stock, bond, notes or other securities belonging to an estate may be deposited with a savings bank, national bank, or a trust company duly incorporated under the laws of this state or the United States and qualified to do a trust business in this state.

Does this section of law require a savings bank or national bank to qualify under the laws of this state or the laws of the United States to do a trust business before the court could order a fiduciary to deposit stocks, bonds, etc., in said savings bank or national bank for safe keeping in order that the fiduciary’s bond may be reduced, or is the right conferred on national banks or savings banks in their charter to transact such trust business in this state?”

Section 10506-23, General Code, referred to in your letter, reads in full as follows:

“In any case where a bond is or shall be required by probate court from a fiduciary, and the value of the estate or fund is so great that the probate court deems it inexpedient to require security in the full amount prescribed by law, the said probate court may direct that any certificates of stock, bonds, notes, or other securities belonging to the estate or fund be deposited with a savings bank, national bank or trust company, duly incorporated under the laws of this state, or of the United States and *qualified to do a trust business in this state*, as may be designated by order of the probate court.” (Italics the writer’s.)

It is to be noticed that the statute makes use of the words, “qualified to do a trust business in this state.” Your inquiry relates to whether or not savings and national banks must so qualify under the laws of Ohio before they can legally receive securities from a fiduciary as provided in the above section. In reference to this question, I call your attention to section 710-2, General Code, of the Banking Act which reads as follows:

"The term 'bank' shall include any person, firm, association, or 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, a pass-book, a note, a receipt, or other writing, and unless the context otherwise requires as used in this act includes commercial banks, savings banks, trust companies and unincorporated banks; provided that nothing herein shall apply to or include money left with an agent pending investment in real estate or securities for or on account of his principal; nor to building and loan associations or title guarantee and trust companies incorporated under the laws of this state.

All banks, including the trust department of any bank, organized and existing under laws of the United States, shall be subject to inspection, examination and regulation as provided by law."

Section 710-150, General Code, as amended in 115 O. L. 470, reads in part as follows:

"No trust company, or corporation, either foreign or domestic, doing a trust business shall accept trusts which may be vested in, transferred or committed to it by a person, firm, association, corporation, court or other authority, of property within this state, until its paid-in capital is at least one hundred thousand dollars, and until such corporation has deposited with the treasurer of state in cash the sum of one hundred thousand dollars, except that the full amount of such deposit by such corporation may be in bonds, * * *."

It would appear that from a reading of the above sections, the savings and national banks in question would have to qualify under the provisions of section 710-150, supra, before they could accept the deposit of securities under the provisions of section 10506-23, supra. In this connection, I call your attention to an opinion to be found in Opinions of the Attorney General for 1932, Volume II, page 666, the syllabus of which reads as follows:

"Neither a national banking association doing business in this state nor a bank organized under the laws of the State of Ohio, may act as registrar of either stocks or bonds of a general corporation, without first complying with the provisions of Section 710-150, General Code."

Authority for national banks to meet the requirements of the various states for conducting a trust business within such states is specifically granted by Congress. Title 12, section 248, subsection (k), U. S. C. A., reads in part as follows:

"(k) * * * Whenever the laws of a State require corporations acting in a fiduciary capacity, to deposit securities with State authorities for the protection of private or court trusts, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law."

In an opinion to be found in Opinions of the Attorney General for 1933, Volume II, page 1281, it was held as disclosed by the second branch of the syllabus:

"A national bank, with a capital stock of one hundred thousand dollars of common stock and one hundred thousand preferred, and a surplus of forty thousand dollars, when and if validly authorized by the Comptroller of the Currency to transact trust functions, may, upon depositing with the Treasurer of State the cash or securities as enumerated in section 710-150, General Code, legally exercise trust functions in this state."

The above opinion discussed in detail the question of the right of a state to regulate the business of a national bank and I shall not again discuss that question.

After quoting the provisions of the Federal Reserve Act, the following pertinent language is to be found at page 1287 of the opinion:

"In other words, if we concede that by a provision of state law, the state has meant to exercise some supervision over the granting of trust powers to national banks, yet such state statutory provision would be ineffective unless there is something in the federal statute likewise extending such authority. Thus the federal provision as to the deposit and the provision as to the required capitalization both distinctly recognize and apply the requirements of the particular state."

Without further prolonging this discussion, it is my opinion, in specific answer to your question, that a savings or national bank in order to legally receive securities under the provisions of section 10506-23, General Code, must qualify to do a trust business in this state and must comply with the provisions of section 710-150, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2824.

APPROVAL—TWO RESERVOIR LAND LEASES AT BUCKEYE LAKE -
R. WILKE AND EDWARD J. MILLER.

COLUMBUS, OHIO, June 18, 1934.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval two reservoir land leases, in triplicate, executed by you respectively to R. Wilke of Columbus, Ohio, and to Edward J. Miller of Newark, Ohio.

By the leases here in question, each of which is for a stated term of fifteen years, and for an annual rental of \$35.00, there are leased and demised to the respective lessees therein named certain parcels of Buckeye Lake reservoir lands, the parcel demised by the lease first above mentioned being the inner slope and waterfront and the outer slope and borrow pit in the rear thereof, of the easterly 47 feet of Lot No. 58, of lots east of Sayer's boathouse at Buckeye Lake, and the