vs. *Fuel & Supply Co.* 11 Fed. 2d, 740. Since you present no facts concerning the legality or illegality of the assessments, I express no opinion thereon.

Specifically answering your inquiry, I am of the opinion that:

1. Where there exists a special fund, created pursuant to the provisions of section 5625-9, General Code, for the purposes of general construction, reconstruction, resurfacing and repair of county highways and bridges, any funds remaining therein may not be transferred to the bond retirement fund of such subdivision so long as there remain highways or bridges in such county which may be in need of such repair.

2. In the absence of illegality in the levy of a special assessment, in anticipation of the receipt of which bonds have been issued, the board of county commissioners has no authority to cancel or set aside such assessments.

Respectfully,
John W. Bricker,
Attorney General.

762.

LIQUIDATION OF BANK—SECTION 710-89a, G. C. AS AMENDED BY HUNTER ACT APPLICABLE TO BANKS IN PROCESS OF LIQUIDATION ON EFFECTIVE DATE OF ACT—RESUMPTION OF BUSINESS.

SYLLABUS:

Section 710-89a *of the General Code, as amended by the Hunter Act (H. B. No.* 358, 90th *G. A.), is applicable to banks in the process of liquidation on the effective date of that act.*

Columbus, Ohio, May 3, 1933.

Hon. I. J. Fulton, *Superintendent of Banks, Columbus, Ohio.*

Dear Sir:—I have your letter of recent date which reads as follows:

> "You have in your files plan with various amendments thereto approved by your predecessor in connection with the proposed reopening of The O. Savings Bank and Trust Company, T., Ohio. I have been informed that a Reorganization Committee proposes after other requirements are met, to take advantage of the provisions of Section 710-89 (a), known as the Hunter Bill, at the time application is presented to the Court of Common Pleas of L. County, Ohio, for authority to re-open this institution.
>
> The O. Savings Bank and Trust Company was closed on the 17th day of August, 1931, and has since said time been in my possession for the purpose of liquidation, and while the Hunter Bill provides that the same shall be applicable to banks in liquidation on the effective date of said act, I would appreciate your opinion as to whether or not the provisions of this act may be applied in the particular case or should I, irregardless of the enactment, make the same requirement relative to its cash position as regards non-assenters as I have in the past in all

re-openings, that is to say that the bank have upon re-opening cash and liquid assets sufficient not only to meet all conditions of the plan as approved but in addition thereto it have in its possession sufficient cash or liquid assets to pay in full those depositors and creditors who have not consented to the plan."

Section 710-89 (Am. S. B. 657, 90th G. A.) provides that the Superintendent of Banks may, upon the happening of any of nine enumerated contingencies, forthwith take possession of the business and property of any bank.

Section 710-89a, as amended by the Hunter Act (H. B. 358, 90th G. A.), reads:

> "Such bank may with the consent of the superintendent of banks, resume business upon such conditions as may be approved by the court of common pleas in and for the county in which such bank is located. If deemed necessary by the court, such conditions may include, among others, reasonable restrictions upon the withdrawal of deposits and the payment of other liabilities, and may also provide for a proportionate reduction of the deposit and other liabilities of such bank and the substitution, in lieu of the amount by which such deposit and other liabilities are reduced, of trust or participation certificates in assets set aside for the payment thereof; provided that certificates shall in no event impose any liability for the payment thereof upon such bank as reopened except to the extent of the assets so segregated.
>
> If consented to by the superintendent of banks and deemed necessary and proper by the court, such conditions may include requirement that not less than two weeks' notice be given by publication or otherwise, as the court may find reasonable and may direct, to the depositors, creditors and stockholders of such bank, and that a fair and equitable proportion of the assets of such bank and of the stockholders' double liability payments in the possession of the superintendent of banks in proportion to the aggregate amount of their claims, to be ascertained by the court, shall, for the benefit of those depositors and creditors who shall file with the clerk of the court written objections to the proposed resumption of business by such bank on such conditions, be disposed of as the court shall direct or be left in the possession of the superintendent of banks to be liquidated. All such objections shall be filed within a time fixed by such court and stated in such notice. All depositors and creditors, including the state or any political subdivision thereof, if a creditor, who shall fail to file such objections within such time fixed by the court, shall be conclusively deemed to have consented to the resumption of business by such bank upon the conditions approved by the court, and shall be bound by the order of the court approving the same. The order of the court may provide for barring the objecting depositors and creditors from all interest in the assets of the bank and in the stockholders' double liability payments in the possession of the superintendent of banks other than that portion of said assets and of said double liability payments segregated for the benefit of such objecting depositors and creditors as hereinbefore provided."

This section provides that a bank in the possession of the Superintendent of Banks may, with his consent, resume business upon such conditions as may be

approved by the common pleas court. Thus, a bank which has been taken over for liquidation under section 710-89 may resume business during the progress of the liquidation. One of the conditions for such resumption of business, if consented to by the Superintendent of Banks and approved by the court, may be the barring of objecting depositors and other creditors of the bank from all interest in the bank's assets, except their proportionate share segregated for their benefit.

Section 3 of the Hunter Act reads:

> "The provisions of section 710-89a of the General Code, as herein amended, shall be applicable to any bank notwithstanding at the effective date of this act such bank is in the hands of the superintendent of banks for liquidation."

It is apparent that in terms the Act extends the provision regarding non-assenters to banks resuming business after its effective date but which were "in the hands of the superintendent of banks for liquidation" at that time.

It appears that the bank to which you specifically refer in your inquiry was not only "in the hands of the superintendent of banks for liquidation" but was "in the process of liquidation", viz., partially liquidated. Does the provision "in the hands of the superintendent of banks" comprehend banks "in the process of liquidation"?

The latter phrase appears several times in the Baker Act (H. B. No. 661, 90th G. A.), specifically in sections 710-95b, 710-96 and 710-97. Section 710-85 refers to a "bank in liquidation." It is stated in Black on Interpretation of Laws (1896), at page 189, that "where different language is used in the same connection, in different parts of the statute, it is presumed that the legislature intended it to have a different meaning and effect." It may be argued that since the 90th General Assembly in dealing with the banking law in some sections used the language "in the process of liquidation," whereas in the provision in question it referred to banks "in the hands of the superintendent of banks for liquidation," that it must have intended a different meaning to be given the two expressions. The only reasonable distinction appears to be that the latter provision refers to banks which have been taken over for liquidation but the liquidation of which has not yet begun. While recognizing the force of this argument, I do not believe that the legislature intended to so limit the applicability of the Hunter Act.

If words are given their plain meaning, a bank "in the hands of the superintendent of banks" is one having its business and property in the possession of the superintendent. As above pointed out, section 710-89 enumerates nine grounds upon which the superintendent may take possession of the business and property of a bank for liquidation. Prior to the enactment of the Gradison Act (H. B. No. 657, 90th G. A.) that section further provided:

> "*Such bank* may with the consent of the superintendent of banks, resume business upon such conditions as may be approved by the court of common pleas in and for the county in which such bank was located." (Italics, the writer's.)

Similar language is now contained in section 710-89a. "Such bank" refers back to "any bank" having its business and property in the possession of the superintendent, which is one "in the hands of the superintendent for liquidation." I find no cases deciding that only banks in the possession of the superintendent,

but not yet in process of liquidation, might resume business under section 710-89 as it existed prior to the amendment. Nor do I find any cases directly deciding the contrary. However, it has been the practice under the authority of that section to re-open banks which have been partially liquidated. In such cases, the Superintendent of Banks has given his consent and courts of common pleas have given their approval. While general acquiescence cannot justify departure from the law, long and continuous interpretation in the course of official action under the law is a valuable aid in removing doubt as to its meaning. *Smiley* vs. *Holm,* 285 U. S. 355, 52 S. Ct. 397, 76 L. Ed. 795.

As above noted, the 90th General Assembly used the language of section 710-89, which had been construed as authorizing banks in process of liquidation to resume business, when it enacted the Gradison Act and placed this language in section 710-89a. The language was not changed when that section was amended by the Hunter Act. It is well settled that by the re-enactment of a statute without substantial change, the legislature must be considered to have adopted the consistent interpretation theretofore placed thereon. *United States* vs. *Ryan,* 284 U. S. 167, 52 S. Ct. 65, 76 L. Ed. 224.

It is thus clear that the 90th General Assembly adopted the interpretation that a bank, the business and property of which the superintendent has taken "possession," includes a bank that has been partially liquidated. There being no difference between a bank in the "possession" of the superintendent and one "in the hands of the superintendent," it follows that by enacting section 3 of the Hunter Act the legislature must have intended to include within the terms of that act partially liquidated banks in the possession of the superintendent under section 710-89 as well as banks in the hands of the superintendent under that section but not yet in the process of liquidation.

In the light of the foregoing, it is my opinion that by its terms the Hunter Act is applicable to the bank in question and others similarly situated. You are of course aware that your consent both as to the resumption of business and as to imposing conditions, including the one regarding non-assenting creditors, is a matter within your discretion.

I express no opinion as to the constitutionality of the Hunter Act. As to banks in the process of liquidation on the effective date of the Act, the question might be raised as to its validity under article II, section 28, of the Ohio Constitution, rendering invalid retroactive laws, although that section has been held not to inhibit the enactment of remedial statutes in effect retrospective. Such doubtful questions of constitutional validity are for the courts and it is the policy of this office to refrain from expressing an opinion concerning them, except upon the request of legislative committees considering new enactments. A statute is presumed to be constitutional until proved otherwise. *Adkins* vs. *Children's Hospital,* 261 U. S. 525; *College* vs. *State,* 106 O. S. 303. An officer who acts under a statute later judicially declared unconstitutional will be protected. Thus it was held in *Williams* vs. *Morris,* 14 O. C. C. (N. S.) 353, as appears in the fourth branch of the syllabus:

> "Inasmuch as the Legislature is presumed to have passed only constitutional laws, an arresting officer is not liable for false arrest or imprisonment where he acted, properly and within prescribed limits, under an act which was subsequently declared unconstitutional."

It is thus clear that you are not required to decide a difficult question of constitutional law before acting under this statute. It is within your discretion,

subject to approval by the court, to permit the bank in question and those similarly situated to resume business.

Respectfully,
JOHN W. BRICKER,
Attorney General.

763.

CONSTITUTION OF OHIO—INITIATIVE PETITION TO AMEND—DATE AND RESIDENCE OF SIGNER MUST BE WRITTEN THEREON BUT NOT NECESSARILY PERSONALLY.

SYLLABUS:

The date on which a signer of an initiative petition seeking a constitutional amendment signs such petition and the residence of such signer must be written thereon as required by Section 1g, *Article* II *of the Constitution, but this information may be filled in by another. Attorney General's opinions* 1913, *Vol.* II, *p.* 1356; 1915, *Vol.* II, 1749, 1817 *overruled, under authority of In re Referendum Petition,* 18 *N. P. (N. S.)* 140.

COLUMBUS, OHIO, May 3, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion on the following question:

> "Must the signer of a part of an initiative petition seeking a constitutional amendment personally write thereon the date of such signing, his residence address, including the ward and precinct where required, as provided in Section 1g, of Article II of the Constitution, or may such data be filled in for him by another?"

My imediate predecessor held in an opinion in which I concur, being Opinion No. 4272, rendered April 23, 1932, that this data must be contained in such an initiative petition. The first two branches of the syllabus are as follows:

> "The failure to place the date of signing on an initiative petition for a constitutional amendment invalidates the signature of such petitioner.
>
> Where the signer to such a petition resides in a municipality, the failure to state thereon any information as to the ward and the precinct in which his residence is located invalidates the signature of such petitioner."

The foregoing opinion, however, did not pass upon the question of whether or not the signers must personally write this information on the petitions or parts of petitions which are signed. The language of this opinion with respect to this matter is as follows:

> "I assume that by these inquiries you do not mean to raise the question as to whether these matters may be placed upon such petitions