

2221.

BANKS—LIMITATION UPON AMOUNT OF INVESTMENT FOR LANDS
AND BUILDINGS FOR BANKING QUARTERS DISCUSSED.

SYLLABUS:

The limitation upon the amount of investment by a bank for lands and buildings for banking quarters prescribed by Section 710-108, General Code, is to be applied only at the time of the investment and any subsequent changes in the capital and surplus accounts have no effect upon the legality of such investment.

COLUMBUS, OHIO, June 11, 1928.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

“A bank purchases land and erects thereon a building for its banking quarters at a cost not in excess of sixty per cent of its paid-in capital and surplus. Subsequent thereto the surplus fund of said bank is reduced and as a result thereof the cost of said land and building exceeds at this time sixty per cent of the paid-in capital and surplus of the bank.

Please advise me whether in your opinion this bank may be required under Section 710-108 (a) of the General Code of Ohio to reduce the carrying value of said land and building to sixty per cent of its present paid-in capital and surplus.”

Section 710-108 of the General Code is as follows:

“A bank may purchase, lease, hold and convey real estate only as follows:

(a) A building or quarters therein, or lands whereon is erected or may be erected a building or buildings useful for the transaction of its business and from portions of which, not required for its use, a revenue may be derived; but the cost of such building or buildings and the lands whereon they are erected, in no case shall exceed sixty per cent of its paid-in capital and surplus;

(b) Such as is mortgaged or conveyed to it in good faith by way of security for loans made by or money due to such corporation:

(c) Such as has been purchased by it at sales upon the foreclosure of mortgages owned by it, or on judgments or decrees obtained or rendered for debts due to it, or in settlements effected to secure such debts. All real property referred to in this paragraph shall be sold by such bank within five years after it is vested therein, unless upon application by the board of directors, the Superintendent of Banks extends the time within which such sales shall be made.”

As you point out, a bank is, by the terms of this section, authorized to expend for lands and buildings useful for the transaction of its business an amount not to exceed sixty per cent of its paid-in capital and surplus. If, at the time the bank makes the expenditure, it conforms to this limitation no criticism of such course can then be made. Your question, however, is whether or not a subsequent impairment

of surplus, or surplus and capital, which results in the cost of the building and land on the books of the company being more than sixty per cent of the capital and surplus, would warrant you in requiring the bank to reduce the carrying value of the land and building to the maximum prescribed by the section.

You will observe that the section is a definite limitation upon the cost of the buildings and lands. In my opinion the limitation is to be measured solely by the cost at the time of the acquisition of the property. That is to say, if the cost was then within the maximum prescribed by the section no subsequent change in capital or surplus would in any way affect the validity of the investment. To hold otherwise might conceivably prove disastrous. If the bank, by reason of the depletion of its surplus account were to be required to dispose of a portion or all of its property, it might further weaken its financial situation. A forced disposition of real property is almost always accompanied by some degree of sacrifice of value. Again, the property might be of such character that it would be impossible to dispose of a portion thereof so as to bring the investment for banking quarters within the maximum unless the whole property were sold. From all these considerations, I have reached the conclusion that there is no authority to require the disposal of any part of the real estate by reason of a subsequent shrinkage in the capital or surplus account bringing the amount invested in such real estate above the sixty per cent maximum.

As I understand your question, however, you are asking specifically whether you may require the bank to reduce the carrying value of the real estate to the sixty per cent maximum. I interpret this to mean that you propose to require the book value of the real estate to be reduced so as to be within the maximum. It is, of course, true that you, by reason of your statutory authority with respect to the examination of banks, have the right to require in certain instances that investments or assets of banks be charged off or reduced in value on the books. Thus in Section 710-20, General Code, where assets are of doubtful or disputed value, provision is made for the selection of appraisers whose judgment shall be accepted as the probable value of the assets for the purposes of examination. Further, in Section 710-111 the Superintendent of Banks is given "the power to require any security to be charged down to such sum as in his judgment represents its value," and by the next sentence it is provided that "the Superintendent of Banks may order any security which he deems undesirable removed from the assets of a bank." I do not believe, however, that the authority so conferred upon you extends to requiring an arbitrary adjustment of the book value of the real estate devoted to banking purposes simply because of the sixty per cent limitation prescribed by Section 710-108. If the bank carries such real estate on its books at cost and such figure fairly represents the present value of such real estate or is less than its present value, the bank is in my opinion fully complying with the law. If, however, the value of such real estate has depreciated and is at the present time less than cost, I believe your authority extends to having an appraisal thereof, and you may require the bank to carry such asset thereafter at the figure found by such appraisal. This, of course, has nothing to do with the sixty per cent limitation in Section 710-108 which, as I have before stated, is solely to be applied in measuring the maximum to be invested at the time of the acquisition of the real estate.

Respectfully,
EDWARD C. TURNER,
Attorney General.