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BANKING CODE—MUTUAL SAVINGS BANKS—ESTABLISHMENT OF BRANCHES AND PURCHASE OF REAL ESTATE—PERMISSIBLE TO CONSTRUE TERM “CAPITAL” AS USED IN SECTIONS 710-37 AND 710-108a G. C. TO MEAN “SURPLUS FUND” AS DEFINED IN SECTION 710-148e G. C.

## SYLLABUS:

In applying to mutual savings banks the provisions of the Banking Code relating to the establishment of branches and the purchase of real estate (Sections 710-37 and 710-108(a), respectively) it would be permissible to construe the term “capital” as used therein to mean “surplus fund” as defined in Section 710-148e of the General Code.

Columbus, Ohio, March 22, 1949

Hon. Paul A. Mitchell, Superintendent of Banks  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I would appreciate very much your construction of Section 710-148g of the General Code of Ohio, in connection with the last paragraph of Section 710-37 and sub-paragraph (a) of Section 710-108 of the General Code of Ohio.

“As you know, our societies for savings, or savings societies, have no capital and we have at all times construed the provisions relating to capital as applicable to surplus.

“I request that your immediate attention be given to this matter, as the same is urgent.”

The pertinent provisions of the General Code which you refer to follow :

Section 710-148g. "All statutory provisions in effect from time to time relating to \* \* \* establishing branches, \* \* \* purchase of real estate by banks \* \* \* shall be applicable to corporations incorporated hereunder (mutual savings banks.)"

Section 710-37. "\*\*\* No Bank shall hereafter be permitted to establish a branch or branches as provided in section 710-73 of the General Code unless such bank has, in addition to the minimum capital herein required, sufficient capital equal to a minimum of thirty-five thousand dollars for each such branch to be established in a village the population of which is less than five thousand; an additional minimum of fifty thousand dollars for each such branch to be established in a city or village the population of which exceeds five thousand but does not exceed twenty-five thousand and an additional minimum of one hundred thousand dollars for each such branch to be established in a city, the population of which exceeds twenty-five thousand."

Section 710-108. "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 book value of such building or buildings and the lands whereon they are erected, in no case shall exceed fifty per cent of its capital;"

You may recall that in 1933 the General Assembly of Ohio enacted legislation authorizing the incorporation and certification of societies for savings or savings societies as mutual savings banks without capital stock. The legislation was also regulatory and extended certain rights and privileges to such banks. (H. B. No. 10, enacted by the second special session of the 90th General Assembly; codified as Sections 710-148a through 710-148L.) By reference, the legislators made applicable to mutual savings banks various statutory provisions governing the activities of other banks and banking institutions. Included among these are the provisions quoted from above authorizing banks to establish branches and to purchase real estate. The problem at issue arises from the fact that the right to establish branches and purchase real estate is based on the capital of the institution concerned while mutual savings banks have neither capital stock nor capital in the conventional sense. The statutes do not deal directly with the

problem. We are therefore compelled to look to applicable rules of statutory construction and other sources for an answer.

The cardinal principal of statutory construction or interpretation is to ascertain, declare and give effect to the legislative intent. A construction should be avoided which would render a part of the statute inoperative and meaningless unless manifestly required. See 37 O. Jur. 274, 275 and 337 et seq. In the case at hand it is clear that the legislature intended that mutual savings banks should be permitted to establish branches and purchase real estate on the same basis as other banking institutions. Also the legislature must be presumed to have known that since mutual savings banks by statutory definition are without capital stock it would therefore be necessary to apply the equivalent of capital in order to give effect to its enactment. In the face of these considerations I am of the opinion that it is imperative that the mutual savings bank equivalent of capital be determined and applied.

You have stated that the Division of Banks has consistently construed provisions relating to capital as meaning surplus when applied to mutual savings banks. I assume that by your reference to "surplus" you mean "surplus fund" which is defined in Section 710-148e of the General Code as follows:

"\* \* \* the surplus fund shall be understood to mean the net assets of such corporation over and above the amount of its debts and deposits, excluding, however, from its debts its liability on capital notes or debentures as hereinafter authorized if such capital notes or debentures are subordinated to its other debts and deposits."

As you know courts give considerable weight to the construction given by administrative bodies to the statutes which they administer. See 1937 Op. A. G. 1829 1833, citing *State ex rel v. Brown*, 121 O. S. 73, 75 as follows:

"It has been held in this state that 'administrative' interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with seriously, and is not to be disregarded and set aside unless judicial construction makes it imperative so to do."

I believe that your construction is consistent with an early opinion of the Attorney General construing certain provisions of the mutual savings bank act. (1933 O. A. G. No. 2058, 1973.) In that opinion the Attorney General had before him, among other things, the provision of the Federal Reserve Act authorizing mutual savings banks to apply for and be ad-

mitted to membership in the Federal Reserve System. The provision of the Federal Reserve Act referred to provided that:

“Any mutual savings bank having no capital stock \* \* \* but having surplus and undivided profits not less than the amount of capital required for the organization of a national bank in the same place, may apply for and be admitted to membership in the Federal Reserve System in the same manner and subject to the same provisions of law as state banks and trust companies. \* \* \*”  
Sec. 9 of the Federal Reserve Act as amended; 12 U. S. C. 321-331.

Applying the Ohio statutes governing mutual savings banks to the provision of the Federal Reserve Act just quoted, the Attorney General concluded as follows:

“(1) A mutual savings bank, organized pursuant to the authority of H. B. No. 10, enacted by the second special session of the 90th General Assembly or a savings society or society for savings, organized prior to its enactment but having complied with the provisions of Section 710-148k, General Code, each having a surplus fund and undivided profit fund jointly equal in amount to the capital required for the organization of a national bank in the place where such institution is located is authorized by such H. B. No. 10, to become a member bank of the federal system and may legally purchase stock in the Federal Deposit Insurance for the purpose of procuring deposit insurance pursuant to the requirements of the federal ‘Banking Act of 1933’ or as hereafter amended.”

It is seen that under the Federal Reserve Act “surplus and undivided profits” of mutual savings banks are accepted as the equivalent of capital in stock institutions; and also that the Attorney General of Ohio has ruled in effect that the statutory “surplus fund” of mutual savings banks is the equivalent of capital under the Federal Reserve Act and the Banking Code of the State of Ohio. (I am assuming that under the definition of “surplus fund” “undivided profits” are taken into account in making the computation required and therefore when the Attorney General used the term he was merely following the language of the Federal statute.)

On the basis of the preceding I am of the opinion that in applying to mutual savings banks the provisions of the Banking Code relating to the establishment of branches and the purchase of real estate, Sections 710-37 and 710-108a, General Code, respectively, it would be permissible to

construe the term "capital" as used therein to mean "surplus fund" as defined in Section 710-148e of the General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.