

1968.

BANK IN LIQUIDATION—TRUST DEPARTMENT FUNDS DEPOSITED
BY SUPERINTENDENT OF BANKS IN ANOTHER STATE BANK
ENTITLED TO PREFERENCE IN CASE OF INSOLVENCY, CLOSING
OR SUSPENSION OF SUCH DEPOSITORY.

SYLLABUS:

Moneys received by the Superintendent of Banks in continuing the trust department of a bank in liquidation by court order, which funds have been deposited by the Superintendent in another state bank, are by virtue of Section 710-96 of the General Code entitled to a preference in case of the insolvency, closing or suspension of any such depository.

COLUMBUS, OHIO, December 8, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent letter, which reads as follows:

“In the liquidation of banks having trust departments there comes into my possession moneys received from time to time after the closing of such banks, which moneys are so received by me as Superintendent of Banks in charge of the liquidation of said banks by reason of their exercising trust powers. These moneys to a large extent may not be immediately distributed or otherwise disposed of in accordance with the order or instrument creating the trust.

I would like to know whether such moneys deposited in accordance with the provisions of the first paragraph of amended Section 710-96 G. C. would, in the case of the insolvency, closing or suspension of the depository, be entitled to payment as preferred claims.”

The first paragraph of Section 710-96 of the General Code, as amended by House Bill 661, 90th General Assembly, reads as follows:

“The moneys and funds collected in process of liquidation of any bank by the superintendent of banks, except as otherwise provided for in this section, shall be from time to time deposited in one or more banks organized under the laws of this state, subject to his order, and in case of the insolvency, closing or suspension of any such depository, such money and funds shall be preferred and the property and assets of such closed depository impressed with a trust for the payment thereof.”

Your question is whether the preference created by this paragraph includes funds coming into the hands of the Superintendent in continuing the operation of the trust department. Your precise question is whether these funds are “moneys and funds collected in process of liquidation.”

Heretofore in informal communications I have given an affirmative answer to this question. I am unable to find where any court has up to this time construed this section. There is nothing in the language of Section 710-96 indicating a legislative intent to exclude such funds. When the Superintendent of Banks takes possession of the business and property of a bank having a trust department,

it is necessary for him to continue the operation of such department until after new trustees can be appointed or other disposition made of the trust. It has been the practice for the Superintendent to obtain a court order authorizing such continuation. In thus continuing to act as trustee, funds necessarily come into his possession which cannot be immediately distributed. It is my opinion that the legislature intended to accord a preference to such funds when deposited by the superintendent in another state bank. It seems to me that a technical distinction between the funds derived strictly from the liquidation and such uninvested trust funds is unwarranted in view of the purpose of the statute.

In specific answer to your inquiry, it is my opinion that moneys received by the Superintendent of Banks in continuing the trust department of a bank in liquidation by court order, which funds have been deposited by the Superintendent in another state bank, are by virtue of Section 710-96 of the General Code entitled to a preference in case of the insolvency, closing or suspension of any such depository.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1969.

BANK—UNAUTHORIZED TO REDUCE CAPITAL STOCK BELOW MINIMUM REQUIRED BY SECTION 710-37, G. C., WHEN CAPITAL IMPAIRED, AND ISSUE AND SELL CAPITAL NOTES AND DEBENTURES IN LIEU THEREOF.

SYLLABUS:

A bank having its capital impaired may not legally reduce its capital stock below the minimum required by Section 710-37 of the General Code, and in lieu thereof, issue and sell capital notes and debentures, authorized by Section 710-126a of the General Code, in an amount equal to or in excess of such reduction.

COLUMBUS, OHIO, December 8, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

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

“Section 710-126a of the General Code permits banks organized under the laws of this state to issue capital notes and debentures. Reconstruction Finance Corporation has evidenced a desire to assist in instances where the examiners of this department or of the Federal Deposit Insurance Corporation find it necessary to repair the capital structure of certain banks examined, by the purchase from such banks by said corporation of capital notes or debentures.

The question has been presented to me, if in any such instance through losses or otherwise the undivided profits and surplus of a bank have been exhausted and the capital thereof impaired, may such bank by proper corporate action reduce its capital stock below the minimum required under Section 710-37 of the General Code of Ohio and forthwith issue and sell to Reconstruction Finance Corporation its capital