banks by the government in any real sense; they are, rather, sums allowed to remain where they are for the time being until the government sees fit to use them, subject to the-giving of certain security. When section 9660 G. C. refers to "Government deposits" it is not believed that it intends to refer to any such arrangement as this.

While it may not be strictly logical to do so, this department cannot forbear to point out the consequences of holding that bonds of the French Republic are proper subjects for investment by building and loan associations. If such bonds are such proper subjects of investment, then all the other so-called "securities" referred to in circular No. 92 are likewise proper subjects of investment, and the result would be that building and loan associations would be authorized to invest their surplus fund in, for example, "commercial paper and bankers' acceptances" (Par. (h), circular No. 92, supra). The reason why such securities are acceptable to the United States as collateral to secure the temporary and special "deposits" to which circular No. 92 relates is clear enough, but that the general assembly of Ohio never intended that such investments should be made by building and loan associations is equally clear; nor would the government of the United States be likely to accept such securities as collateral to secure deposits actually made by it in national banks under section 9691, United States Compiled Statutes.

For the reasons above stated, this department is of the opinion that an Ohio building and loan association may not invest its idle funds in French government bonds.

Copies of circular Nos. 92 and 176 kindly loaned by you to this department are herewith returned.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2484.

BUILDING AND LOAN ASSOCIATIONS—NOT AUTHORIZED TO PURCHASE COLLATERAL TRUST NOTES SECURED BY TRUST DEPOSIT OF NOTES SECURED BY REAL ESTATE MORTGAGES FROM TIME TO TIME ASSIGNED TO TRUSTEE.

A building and loan association is not authorized by section 9662 of the General Code to purchase collateral trust notes secured by a trust deposit of notes secured by real estate mortgages, from time to time assigned to the trustee.

COLUMBUS, OHIO, October 18, 1921.

Department of Commerce, Division of Building and Loan Associations, Columbus, Ohio.

GENTLEMEN:—You request the opinion of this department as follows:

> "We submit herewith a copy of First Mortgage Collateral Trust Agreement between the Union Mortgage Company and the Guardian Savings & Trust Company, trustee, both of Cleveland, Ohio, and respectfully request your opinion as to whether or not the First Mortgage Collateral Trust six per cent gold notes issued thereunder constitute an authorized investment for the funds of a building and loan association under section 9662 of the General Code of Ohio.

This question is raised by a building and loan association at Lima, who contemplate making such an investment if within the scope of their powers."

Section 9662 of the General Code authorizes an Ohio building and loan association

"To buy but not to sell, except whenever it desires to terminate and close up its business affairs or in case of financial emergency, and then only with the consent previously had of the inspector of building and loan associations, interest bearing obligations secured by real estate mortgages, which shall in all respects comply with, and be within the rules adopted for making mortgage loans by the corporation making such investments. Such mortgage investments may be held and reported as mortgage loans."

The trust agreement, copy of which you have furnished to this department, recites that the Union Mortgage Company, referred to throughout as the "Company", is engaged in the business of lending money upon mortgage security and is authorized to borrow money and to issue its negotiable notes therefor and to secure payment thereof by *pledging securities;* that the company desires to borrow money and has determined to issue its notes called "collateral trust notes"; that to secure payment of those notes its board of directors has authorized the execution and delivery of the agreement and the pledging and assignment of all the company's right, title and interest in and to certain "notes and mortgages and other choses in action" as might be necessary to secure the payment of the collateral trust notes; that the form of the collateral trust notes includes a negotiable promise to pay a certain sum to the bearer, and recites that the note is one of an issue of notes, all of which "are equally and ratably secured by the deposit of promissory notes secured by first mortgages upon real property or interests therein under a * * * 'Trust Agreement'". After these recitals the company, for a valuable consideration, the receipt of which is acknowledged, to it paid by the Guardian Savings & Trust Company, designated as the "Trustee", "and in order to secure equally and ratably the prompt and punctual payment of the principal and interest of all the collateral trust notes aforesaid, * * * has assigned, transferred, set over, delivered, pledged and hypothecated, and does hereby assign, transfer, set over, deliver, pledge and hypothecate to and with the trustee * * * the *promissory notes and mortgages* described in 'Schedule A' deposited with the trustee contemporaneously herewith, * * * which promissory notes and mortgages, and other choses in action, * * * are hereinafter termed 'Mortgage Securities', * * * in trust, nevertheless, for the equal and pro rata benefit, security and protection of the several persons, firms and corporations who shall from time to time hold collateral trust notes * * * and for the enforcement of payment of the principal thereof and the interest due thereon."

There are a number of detailed provisions designated by articles and sections, but it is believed that the above quotations will suffice to disclose the nature of the trust agreement and to justify the following statement:

The "collateral trust notes" referred to therein are secured by a deposit of notes, mortgages and other choses in action. The notes, mortgages and other choses in action may be in whole or in part secured by real estate mortgage. It is assumed for the purpose of this opinion that all of them are so secured. If less than all of them are so secured it would be clear,

of course, that section 9662 would not justify the purchase of such notes by a building and loan association.

The question as thus assumed may be put as follows:

> Is an interest-bearing obligation secured by a deposit of other interest-bearing obligations, which in turn are secured by real estate mortgages and "interest-bearing obligations secured by real estate mortgages", within the meaning of section 9662 of the General Code?

In the opinion of this department, a negative answer must be given to this question. Section 9662 is very explicit. The security for the interest-bearing obligation must be the real estate mortgage. This security must be direct and, in addition, must "in all respects comply with, and be within the rules adopted for making mortgage loans by the corporation making such investments." It is impossible to say that the collateral trust notes in question comply with these requirements; they are not directly secured by real estate mortgage; in case of any default in the payment of the principal or interest of any such collateral trust note, there could be no immediate recourse to the land, and this of itself, in the opinion of this department, is sufficient to take the case out of the application of section 9662. In addition, however, it cannot be said that the real estate mortgages, by which it might be argued the collateral trust notes are indirectly secured, would comply with and be within the rules adopted for making mortgage loans by the building and loan association; or, putting it in another way, there is no way to ascertain whether this is so or not as the real estate mortgages underlying the collateral trust notes are subject to change from time to time.

For all these reasons, you are advised that, in the opinion of this department, a building and loan association in this state is not authorized to purchase collateral trust notes of this character.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2485.

DEPARTMENT OF COMMERCE—HOW "DIVISION OF SECURITIES" CREATED.

The manner in which that part of the business of the department of commerce formerly conducted by the commissioner of securities should be administered, and the creation of a new division to be known as the "Division of Securities," etc., considered.

COLUMBUS, OHIO, October 18, 1921.

HON. W. H. PHIPPS, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date inquiring whether or not, in the event the director of commerce, with the approval of the governor, should create a new division in the department of commerce under the designation of "Division of Securities", the person appointed to take charge of the division under the title or designation of "Chief of Division", should act in his own name as such chief, or in the name of the director of commerce, was duly received.