

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

notes and debentures in an amount equal to or in excess of the reduction, and in so doing retain legal capital requirements."

Section 710-37 of the General Code, as amended by H. B. 661, 90th General Assembly, provides:

"The capital of a commercial or savings bank or a combination of both shall be not less than thirty-five thousand dollars in villages the population of which is five thousand or less, and fifty thousand dollars in towns and cities the population of which exceeds five thousand and does not exceed twenty-five thousand, and one hundred thousand dollars in cities the population of which exceeds twenty-five thousand.

The capital of a corporation transacting a trust business shall be not less than one hundred thousand dollars and if such business is combined with that of a commercial or savings bank, or a combination of both, such capital shall be in addition to the capital required for such commercial or savings bank, or a combination of both, as provided herein.

No bank hereafter incorporated shall begin to transact business until it has a surplus equal to at least twenty per cent of its capital.

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."

Former Section 9704, General Code, (Repealed 108 O. L. 80) was analogous to this section and was replaced by it. That section provided:

"The *capital stock* of a commercial bank shall not be less than twenty-five thousand dollars; of a savings bank, not less than twenty-five thousand dollars; of a commercial bank and savings bank not less than twenty-five thousand dollars; of a safe deposit company, not less than twenty-five thousand dollars; of a commercial bank and safe deposit company, not less than twenty-five thousand dollars; of a savings bank, commercial bank and safe deposit company, not less than fifty thousand dollars; of a trust company, not less than one hundred thousand dollars; of a trust company and safe deposit company, not less than one hundred thousand dollars; of a trust company and savings bank, not less than one hundred thousand dollars; of a trust company, savings bank and safe deposit company, not less than one hundred and twenty-five thousand dollars; and of a trust company, savings bank, commercial bank and safe deposit company, not less than one hundred and twenty-five thousand dollars." (Italics the writer's.)

Section 710-60, General Code reads:

"Such a corporation may reduce its capital stock in the manner provided for other corporations, but notice of such reduction shall be published in a newspaper of general circulation in the city, village or county, in which it is doing business. *No reduction shall be made to an amount less than the minimum amount of capital stock required for such bank by law*, nor shall such reduction be valid or warrant the cancellation of stock certificates until it has been approved by the superintendent of banks. Such approval shall not be given except upon a finding by him that the security of existing creditors of the corporation will not be impaired." (Italics the writer's.)

While it is arguable that the word "capital" as used in Section 710-37 is not synonymous with "capital stock", unless the contrary is true, I am unable to find what provision of law is referred to in Section 710-60, as requiring a minimum of capital stock. Section 710-60 was formerly Section 9726, General Code, (Repealed 108 O. L. 80) and there is only a slight difference in the wording of these two sections. Without doubt the minimum capital stock requirement referred to in Section 9726, was to be found in the provisions of Section 9704. Similarly, in my opinion, the reference in Section 710-60 is to the requirement of Section 710-37.

In reaching the conclusion that the requirements of Section 710-37 relate to capital stock, I am unmindful of the distinction usually made by those engaged in corporate financing between the terms "capital" and "capital stock". Conyngton, Bennett and Pinkerton, Corporation Procedure, p. 69; 1 Dewing, Financial Policy of Corporations, p. 4.

Section 710-126a of the General Code, enacted as part of H. B. 661, 90th General Assembly, reads:

"A bank may issue its capital notes or debentures at such times in such amounts, and subject to such terms and conditions as the superintendent of banks shall in writing approve; provided that in no event shall such terms and conditions require or permit that the holders of such capital notes or debentures be held individually responsible as such holders for any debts, contracts or engagements of such bank or for assessments to restore the capital of such bank."

A debenture is merely an unsecured bond, or an obligation for the payment of which only the general credit of the corporation is pledged. Corporation Procedure, supra, p. 450. Similarly a note is written evidence of a debt. Debenture holders and the holders of notes are creditors whereas stockholders are the beneficial owners of the corporation. In the case of banks the hazards of ownership are increased by virtue of the liability imposed by Article XIII, Section 3 of the Ohio Constitution and Section 710-75, General Code. Under Section 710-126a, General Code, holders of capital notes and debentures are specifically relieved from this liability for debts of the corporation. It is thus clear that the requirements of Section 710-37, which has for its purpose protection of creditors, cannot be met by substituting notes and debentures for stock.

In the light of the foregoing and in specific answer to your inquiry, it is my opinion that 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.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

1970.

BARBER—ELIGIBLE FOR LICENSE WHEN PRACTICING BARBERING PRIOR TO EFFECTIVE DATE OF AMENDED S. B. NO. 129, ALTHOUGH SEVENTEEN YEARS OF AGE.

*SYLLABUS:*

*A person, resident of this state, who has been, in good faith, engaged in the practice of barbering at one or more established places of business in the State of Ohio at the time of the effective date of Amended Senate Bill No. 129, is entitled to a license pursuant to the provisions of section 10 of such Act, regardless of the fact that such applicant is at the present time seventeen years of age.*

COLUMBUS, OHIO, December 8, 1933.

*State Board of Barber Examiners, Wyandotte Building, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“May the State Board of Barber Examiners issue a license as a registered barber to a person who is at the present time seventeen years of age and who will not become eighteen until next year?

In answering this question you may assume that the applicant is otherwise qualified and meets with the conditions of Section 10 of Amended Senate Bill No. 129. The sole question raised being the question of his age.”

Amended Senate Bill No. 129, regulating the business of barbering, was passed at the recent session of the legislature. This law has been assigned sections numbers 1081-1, et seq., General Code, by the Attorney General.

Your question relates to those persons who are entitled to licenses as registered barbers without taking an examination. The exemption section of the barber's law is 1081-10, which reads as follows:

“Upon the taking effect of this act any person, resident of this state, who has been, in good faith, engaged in the practice of barbering at one or more established places of business in this state or any person who was engaged in the practice of barbering as an apprentice of a person eligible under this section to a certificate of registration as a barber without examination, shall be granted a certificate of registration either as a barber or as an apprentice upon his making application to the board on or before September 1, 1933.

Any person who at the time of the taking effect of this act was a student in a school of barbering shall be qualified, upon graduation from