and federal authorities that before proceeding to the remedy provided by the section mentioned, your department attempt to adjust the matter through the local postmasters at points where such defective mail boxes may be located, who it is thought equally have authority to correct such defects under the provisions of section 830 of the United States postal laws and regulations.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2481.

APPROVAL, DEFICIENCY BONDS OF LEWISBURG VILLAGE SCHOOL DISTRICT IN AMOUNT OF $5,000.

COLUMBUS, OHIO, October 17, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2482.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, HARDIN AND VINTON COUNTIES, OHIO.

COLUMBUS, OHIO, October 17, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2483.

BUILDING AND LOAN ASSOCIATIONS—MAY NOT INVEST IDLE FUNDS IN FRENCH GOVERNMENT BONDS.

An Ohio building and loan association may not invest its idle funds in French government bonds.

COLUMBUS, OHIO, October 18, 1921.

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

GENTLEMEN:—You request the opinion of this department upon a question which may be put as follows:

> May a building and loan association organized under the laws of Ohio invest its idle funds in bonds of the French Republic?

Authority to make such investments is claimed under that provision of section 9660, General Code, governing such investments, to the effect that

they may be made "in such other securities as now or hereafter may be accepted by the United States to secure government deposits in national banks," and by virtue of the regulation of the treasury department of the United States specifying the securities which are acceptable as collateral security for certain deposits of federal moneys known as department circular No. 92. This circular permits the following "securities" to be so pledged:

"(a) Bonds, notes, and certificates of indebtedness of the United States government, of any issue, including interim certificates or receipts for payments therefor; all at par.

(b) Bonds issued under the United States farm loan act, bonds of the War Finance Corporation, bonds of Porto Rico and the District of Columbia, and bonds and certificates of indebtedness of the Philippine Islands; all at par.

(c) The 3½ per cent bonds of the territory of Hawaii at 90 per cent of market value; and other bonds of said territory at market value.

(d) Bonds of any state of the United States, at market value; and approved notes, certificates of indebtedness, and warrants issued by any state of the United States, at 90 per cent of market value.

(e) Approved bonds of any county, city, or political subdivision in the United States; and approved notes, certificates of indebtedness and warrants with a fixed maturity issued by any county or city in the United States which are direct obligations of the county or city as a whole, or which are payable from general taxes levied on all taxable property in such county or city; all at 90 per cent of market value; but not including any such bonds which are at a market price to yield more than five and one-half per cent per annum, nor any such other obligations which are at a market price to yield more than six per cent per annum, if held to maturity, according to standard tables of bond values.

(f) *Approved dollar bonds and obligations, issued since July* 30, 1914, *of foreign governments (and of the dependencies thereof) engaged in war against Germany on September* 21, 1918, *at* 90 *per cent of the market value thereof in the United States, and approved dollar bonds and obligations of any province or city within the territory of any such foreign government or dependency, issued since July* 30, 1914, *at* 75 *per cent of the market value thereof in the United States.*

(g) Approved bonds, listed on some recognized stock exchange, and notes, of domestic railroad companies within the United States; approved equipment trust obligations of such domestic railroad companies; and approved bonds and notes of domestic electric railway and traction companies, telephone and telegraph companies, electric light, power, and gas companies, and industrial companies, secured (directly or by the pledge of mortgage bonds) by mortgage upon physical properties in the United States, and listed on some recognized stock exchange; all at 75 per cent of market value; but not including any such bonds or obligations maturing after October 1, 1925, which are at a market price to yield more than 7 per cent per annum, nor any such bonds or obligations maturing on or before October 1, 1925, nor any such notes, which are at a market price to yield more than 8 per cent per annum, if held to maturity, according to standard tables of bond values.

(h) Commercial paper and bankers' acceptances, having maturity at the time of pledge of not to exceed six months, exclusive of days of grace, and which are otherwise eligible for rediscount or purchase by Federal Reserve Banks; and which have been approved by the Federal Reserve Bank of the district in which the depositary is located; at 90 per cent of face value. All such commercial paper and acceptances must bear the indorsement of the depositary bank or trust company.

(i) Customers' notes, drafts, and bills of exchange indorsed by a correspondent incorporated bank or trust company and rediscounted by the depositary bank or trust company, when approved by the Federal Reserve bank of the district in which the depositary is located, at 75 per cent of face value. All such notes, drafts, and bills of exchange must bear the indorsement of the depositary bank or trust company.

(j) Notes and bills payable of a correspondent incorporated bank or trust company secured by customers' notes, drafts, or bills of exchange to at least an equal amount, when approved by the Federal Reserve bank of the district in which the depositary is located, at 75 per cent of face value. All such notes and bills payable must bear the indorsement of the depositary bank or trust company."

The contrary view is that the securities referred to in section 9660 G. C. and the clause thereof which has been quoted are those specified in another department circular of the treasury department, designated as circular No. 176. The enumeration of acceptable securities in said circular No. 176 need not be quoted. It is sufficient to state that it does not include securities of the class now under consideration.

In order to answer the question thus raised it is necessary to consider both the meaning of section 9660 of the General Code and the scope and purpose of the two federal regulations referred to, respectively.

Considering these matters in the inverse order of their mention herein, it is discovered that circular No. 92 purports to be, and was, issued in pursuance of authority conferred upon the secretary of the treasury by the act designated and referred to by short title as the "Second Liberty Bond Act," with its subsequent amendments, being the act approved September 24, 1917, (Chap. 56, 40 Stat. at Large, 289). The particular section of that act is section 5 of the original, designated in the compilation as section 6829m of the United States Compiled Statutes. It provides, in part, that:

"The secretary of the treasury in his discretion, is hereby authorized to deposit, *in such incorporated banks and trust companies* as he may designate, the proceeds, or any part thereof, arising from the sale of the bonds and certificates of indebtedness and war-savings certificates authorized by this act, and arising from the payment of income and excess profits taxes, and such deposits * * * shall be secured in such manner * * * as the secretary of the treasury may from time to time prescribe."

Though this act does not so explicitly require, the primary purpose of this provision is rather clearly disclosed by the corresponding provision of the "First Liberty Bond Act," being the act of April 24, 1917, (40 Stat. at Large, 37), section 7 of which, after language somewhat similar to that above quoted, sets forth the following proviso:

"Provided, That the amount so deposited shall not in any case exceed the amount withdrawn from any such bank or trust company and invested in such bonds or certificates of indebtedness plus the amount so invested by such bank or trust company."

This shows the intention of congress in authorizing the special deposit of the proceeds of the sale of Liberty bonds, certificates of indebtedness, etc., to have been the avoidance of the necessity of withdrawing money from banks on which checks in payment of Liberty bonds purchased, etc., would be drawn and redepositing the large sums thus accruing to the federal government in regular designated depositaries. Its purpose is made even clearer by the detailed provisions of circular No. 92, referred to, which though issued under the second (in point of time) of the above acts, contains the following directions:

"In fixing the maximum amount of deposits for which it will apply, the applicant bank or trust company should be guided by the amount of the payments which it expects to have to make, for itself and others, on account of bonds, notes, and certificates of indebtedness of the United States issued under authority of said act, and income and profits taxes, as the case may be * * *."

In a sense it might be said that this designation of the several banks and trust companies as depositaries for the limited purpose therein specified is formal only. What happens is that the government simply leaves the income and excess profits tax moneys, and formerly left the proceeds of the sale of Liberty bonds, in the banks against which checks were drawn payable to the government therefor until the government might need the money, designating the banks as government depositaries so as to avoid the disastrous consequences of withdrawing so much money from the banks at one time. National banks are obviously included within this scheme, but it is important to observe that any incorporated bank or trust company may qualify as a so-called "depositary" thereunder. That is to say, the several acts of congress on that behalf and the regulations of the treasury department in pursuance thereof do not relate to the deposit of moneys in national banks, as such, but relate to the special deposit of bond payments and excess profit and income taxes *in all banks and trust companies.*

Circular No. 176, on the other hand, is referable to sections 9691 and 9798 of the United States Compiled Statutes. Section 9691, thus referred to, is an old section, a part of the national bank act of 1874, and it was in force at the time when section 9660 of the General Code was originally enacted and also when it was passed in its present form in 1908 (99 Ohio Laws, 530). It provides, in part, as follows:

"All national banking associations, designated for that purpose by the secretary of the treasury, shall be depositaries of public money, under such regulations as may be prescribed by the secretary. * * * The secretary of the treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safekeeping and prompt payment of the public money deposited with them * * *."

Section 9798, above referred to, is a part of the Federal Reserve act of

1913, and was not in effect when section 9660 G. C. was last amended. It provides, in part, that:

> "The moneys held in the general fund of the treasury * * * may, upon the direction of the secretary of the treasury, be deposited in Federal Reserve banks, * * *."

There is no requirement that Federal Reserve banks give any security to the government for these deposits. The Federal Reserve banks herein designated are not national banking associations, but are the banks created by the Federal Reserve act as the nuclei of the Federal Reserve system, being distinguished from the member banks of that system.

Paragraph 26 of circular No. 176 undertakes to prescribe as follows:

> "From the date of this circular, * * * securities of the following classes, and no others, will be accepted as security for deposits of public moneys with regular *national bank* depositaries."

It is clear that this regulation is, as above stated, an exercise of the power delegated to the secretary of the treasury by United States Compiled Statute section 9691, above quoted.

The foregoing statements have made it apparent, it is believed, that circular No. 176 relates to the securities acceptable for government deposits in national banks, as such, whereas circular No. 92 relates to special deposits which may be made in any incorporated bank or trust company.

Coming now to section 9660 of the General Code, it is to be observed that its exact language is:

> "In such other securities as * * * may be accepted by the United States to secure government deposits *in national banks.*"

Does this provision mean that any securities that a national bank, not in its character as a national banking association but simply as an incorporated bank, may be authorized to give for a special kind of deposits shall be proper investments for building and loan associations of Ohio; or does it mean that the legislature of Ohio intended to adopt by reference the designation of securities acceptable by the United States to secure the deposits made in *national banks,* as such? It is the opinion of this department that the second of the two meanings is clearly indicated by the language of the section. When section 9660 was enacted in Ohio section 9691 of the Compiled Statutes of the United States was in force; it authorized any national bank to become a government depositary upon designation, and it excluded from the privilege of acting as a government depositary all banks other than national banks. It therefore was a statute dealing with government deposits in national banks, and nothing else. The subsequent provisions referred to herein deal with the making of government deposits in banks generally; they do not deal with national banks as depositaries, as such. They are not therefore within the terms of section 9660 of the General Code; nor are they within the spirit of that section.

Dealing now with the special deposits of the proceeds of the income and excess profit tax collections, Liberty bonds and certificates of indebtedness, etc., it is clear, as previously pointed out, that these deposits, while partaking technically of the character of government deposits, are so treated as a matter of convenience merely. They are not sums deposited in the several

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.