

OPINION NO. 941**Syllabus:**

1. Section 1103.32, Revised Code, places upon the banks of this state a duty to make an examination of the assets and liabilities of the bank once during each calendar year and to file a copy of the report of such examination with the Superintendent of Banks within sixty days from the date of completion of the examination or not later than the first day of December of each calendar year, and there is no authority under this statute for the Superintendent of Banks to grant an extension of time beyond the sixty-day period for filing the required report, whether such report is due on or before the first day of December.

2. Under Section 1103.32, Revised Code, examinations must be made and copies of reports filed once during each calendar year, and no extension of time beyond the thirty-first day of December may be granted.

3. The Superintendent of Banks pursuant to Section 1103.32, Revised Code, may grant an extension of time beyond the fifth day following the first day of December but within the sixty-day period so as to relieve a bank from the forfeiture of twenty-five dollars a day for each additional day of delay in filing the required report.

**To: Clarence C. Luft, Superintendent of Division of Banks, Department of
Commerce, Columbus, Ohio**
By: William B. Saxbe, Attorney General, March 23, 1964

Your request for my opinion reads:

"Section 1103.32, Revised Code, provides that directors' examination of each state bank shall be conducted annually and a report of the same filed with the Superintendent of Banks. Effective as of September 24, 1963, Section 1103.32, supra, was amended to provide that the examination report shall be filed with the Superintendent within sixty days from the date of the bank examination or by December 1 which ever occurs first.

"Under the prior provisions of Section 1103.32, supra, there was one filing date prescribed for all the banks which had no relationship to the date of the examination. It was further provided that a twenty-five dollar a day penalty would be imposed for each day of late filing unless the time of filing was extended. In the present law, the daily penalty for late filing and provision for a filing extension appears to relate only to the case where December 1 is the controlling date for filing the report.

"The amended changes in Section 1103.32, supra, have raised the following questions which I wish to present to you for consideration:

"1. In the case a report is due prior to December 1 does the Superintendent have any authority to extend the time of filing a report beyond sixty days from the date of the examination?

"2. If the answer to the first question is no, should the Superintendent refuse to accept any examination filed after the sixty day period and require a new examination to be made and reported? If not, is there any penalty that could be imposed for late filing?

"3. If December 1 is the controlling date for filing may the Superintendent extend the time of filing beyond December 31 or beyond sixty days from the date of the examination by the bank.

"4. If December 1 is the controlling date for filing can the Superintendent accept a delinquent filing after the sixty day period as long as the twenty-five dollar a day penalty is assessed.

"Because of the state-wide effect of the administration of this provision of the Code on all state banks I wish to request your formal opinion on the questions herein presented."

Section 1103.32, Revised Code, as amended effective September 24, 1963, reads:

"A committee of at least three directors

or stockholders shall be appointed by the board of directors of every bank to examine, or to superintend the examination of the assets and liabilities of the bank and to report to the board the result of such examination. The board may provide for such examination by a certified public accountant, or by a clearinghouse examiner in any city where such examination is provided for by the rules of the clearinghouse association. One such examination shall be made each calendar year, and a copy of such report, attested and verified under oath by the signatures of at least three members of such committee, or by the certified public accountant or clearinghouse examiner making such examination, shall be filed with the superintendent of banks within sixty days after completion of such examination or not later than the first day of December of each calendar year whichever occurs first. Any bank failing to file with the superintendent a copy of such report within five days after the first day of December of such calendar year shall, unless the time is extended by the superintendent, be subject to a forfeiture of twenty-five dollars for each day thereafter that such failure continues, to be recovered by the superintendent and paid into the fund provided for by Section 1111.27 of the Revised Code."

Prior to this amendment, Section 1103.32, Revised Code, required that such an examination be made once in each twelve months; all copies of reports, regardless of the date of the examination, were then to be filed with the Superintendent of Banks within sixty days after the first day of April of each year. The forfeiture clause became effective if the report had not been filed within five days after the sixty-day period measured from the first day of April, unless the Superintendent of Banks granted an extension.

It is my opinion that the recent amendment of Section 1103.32, Revised Code, has varied considerably the requirements for making the directors' examinations and for filing copies of the reports with the Superintendent of Banks. One examination must now be made or supervised by a committee of directors or stockholders each calendar year and a copy of the report of the examination, which report is prepared for the board of directors, must be filed with the Superintendent of Banks within sixty days after completion of the examination or not later than the first day of December, if that date occurs earlier than the expiration of the sixty-day period.

It is my interpretation of this amended section that compliance with the sixty-day filing period is mandatory. A duty is placed upon the banks of this state to make this required examination and to file the report not later than sixty days after the examination is completed. Those banks which have this examination of the assets and liabilities completed early enough in the calendar year may have the benefit of the full

period of sixty days for the preparation and filing of the required reports.

Banks which delay in making the directors' examination until the latter part of the year will have less than sixty days within which to complete the report and file a copy of it with the Superintendent of Banks; here the date of the first day of December controls if that date intervenes between the completion of the examination and the expiration of the sixty-day period.

The General Assembly has, after establishing the first day of December as the final date within which a copy of a report may be filed, granted an additional period of five days in which a bank may file the necessary report before the penalty clause requiring payment of a forfeiture becomes effective. There is, however, nothing in this language which suggests to me that this five-day period in any way extends the sixty-day period prescribed by statute; if the limit of sixty days from the completion of the examination expires before the end of this additional five-day period, the report must be filed prior to the close of the sixtieth day.

Any bank which has delayed in making this statutory examination and preparing and filing the report beyond the end of the fifth day after the first of December is subject to a forfeiture in the sum of twenty-five dollars for each additional day of delay in complying with this statute; the General Assembly has vested in you the authority at this point to grant an extension of time and so relieve a bank from the forfeiture provision of this statute. This authority to grant an extension of time and so relieve a bank from the payment of a penalty is one which you may exercise in your discretion. This, however, is the only authority to extend a filing date given to you by Section 1103.32, Revised Code, and it is my conclusion that in no event may you extend the filing date beyond the limit of sixty days from the date of completion of the examination.

This statute does not expressly impose a penalty for failure to file a report within the prescribed time limit, except the forfeiture clause which has no application until the end of five days after the first of December. There is no specific provision for filing a copy of a report after the statutory sixty-day period. I interpret this statute as placing a duty upon the banks of this state to complete the examination and file the report within sixty days. Banks which present reports after the termination of the statutory period may be required to have another examination made and to file the report within sixty days from the date of such examination; this would be true where sufficient time remains that it would be possible to comply with the requirements of this section within the calendar year.

Section 1103.32, Revised Code, now requires that one directors' examination as described in the section be made each year; the rather stringent requirements for filing a copy of the report have been discussed at length. I am unable to find any language which suggests to me that an extension of time for filing a report could be granted beyond the thirty-first day of December of any year, despite the

fact that the sixty-day period following completion of the examination may not have expired. Such an interpretation would tend to render meaningless the express requirements of this statute.

I am aware that you may be faced with many practical problems in the administration of this law. For example, you may find, after five days after the first day of December, that there are banks which have not complied with this statutory requirement and that it would be impossible for an examination to be made and a report filed within sixty days thereafter, or within the calendar year. At that point, where enforcement of and compliance with this section is impossible, you should determine whether to accept a delinquent report and what, if any, action you wish to take against such a bank.

Various sections of the Revised Code grant to you authority to take disciplinary action in the performance of your duties, Sections 1111.24 and 1103.28, Revised Code, are examples. Section 1111.24, Revised Code, directs you to notify every bank which has failed to make and transmit the reports required by several chapters of the Revised Code, including Chapter 1103, Revised Code, and provides for a forfeiture of one hundred dollars a day during which the failure continues after five days from the receipt of the notice. Your records will reflect any delinquencies which exist after the close of the period specified in Section 1103.32, Revised Code, and you may then determine whether to invoke the procedure and penalty set out in Section 1111.24, Revised Code. You may proceed under Section 1103.28, Revised Code, which vests in you the authority to initiate action to remove a director or officer who has continued to violate any law relating to the bank which he serves as such director or officer.

It is, therefore, my opinion and you are advised:

1. Section 1103.32, Revised Code, places upon the banks of this state a duty to make an examination of the assets and liabilities of the bank once during each calendar year and to file a copy of the report of such examination with the Superintendent of Banks within sixty days from the date of completion of the examination or not later than the first day of December of each calendar year, and there is no authority under this statute for the Superintendent of Banks to grant an extension of time beyond the sixty-day period for filing the required report, whether such report is due on or before the first day of December.

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