thereby make the same subject to taxation the same as are the shares of stock of national and state banks. In so far as the terms of this section and of sections 5408 and 5412, General Code, can have any application to shares of stock issued by a building and loan association, they obviously apply only to permanent and non-retirable shares of stock which many building and loan associations have issued under the apparent authority of section 9649, General Code.

I am therefore of the opinion that shares of mortgage loan stock, issued by a building and loan association to a borrower at the time the association makes a mortgage loan to him, are not taxable either as deposits or as stock.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4676.

BANK—TAXATION UNDER INTANGIBLE TAX—WHAT INCLUDED WITHIN TERM TAXABLE DEPOSITS—HOW BOOK VALUE OF SHARES OF BANK DETERMINED.

SYLLABUS:

1. *The words "taxable deposits" as used in the so-called "Intangible Tax Law" include certificates of deposit, whether negotiable or non-negotiable, certified checks, accounts deposited with a bank for a particular purpose, such as escrow, sinking fund, bond and coupon accounts and deposits created by deposit of checks on other banks against which the depositor has the right to draw.*

2. *The term "taxable deposits" as used in the so-called "Intangible Tax Law" does not include checks endorsed to a bank for collection, or those in which the title to the check does not pass to the bank, and against which the depositor does not have the right to draw, or sums of money deposited by the bank with its own checking department against which dividend checks have been drawn but have not yet been presented for payment on tax listing day.*

3. *When a bank maintains its accounting records as required by section* 710-111, *General Code, such corporation in determining the book value of its shares, may not deduct from the capital and surplus reserves for taxes, whether due and payable, but when it has set up a reserve at the direction of the Superintendent of Banks, who had directed that a certain sum be either deducted from its assets or a reserve be set up equal to such sum, such item of reserve should be considered and deducted from the value of the bank's investment assets in determining the book value of the shares of the bank for the purposes of taxation.*

COLUMBUS, OHIO, October 8, 1932.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Your recent request for opinion over the signature of Hon Geo. C. Braden, reads as follows:

> "The Commission has directed me, by formal resolution, to request your opinion relative to certain items arising in the taxation of banks under the provisions of Sections 5406 to 5414, General Code, inclusive.

The questions are as follows:

1. Should accounts represented by negotiable and non-negotiable certificates of deposit be included in taxable deposits?
2. Should the item of float or uncollected items be included in taxable deposits?
3. Should cashier's or official checks be included as taxable deposits?
4. Should accounts, representing unpaid dividend checks, be included as taxable deposits?
5. Should certified check accounts be included as taxable deposits?
6. Should certain items on deposit in financial institutions and designated as payable for particular purposes and not withdrawable by the depositor, such as escrow, sinking fund, bond and coupon accounts, be included in taxable deposits?
7. Several institutions in determining the book value of their shares have deducted from capital and surplus, items designated as known losses not charged off, and reserves including:
   (1) Reserve for definite and known losses.
   (2) Current taxes.
   (3) Past due taxes with respect to which litigation exists (National Bank Injunction cases).

As having a bearing on this question, we desire to know whether a bank may carry its assets on a cash receipts and disbursement basis, and its liabilities on an accrual basis, or whether such institutions are required to use the same accounting method for both liabilities and assets under the provisions of Amended Senate Bill 323."

Your first six inquiries call for a construction of the "Intangible Tax Law" in order to determine what is a "taxable deposit." Section 5328-1, General Code, must be referred to in order to determine what deposits are taxable. In so far as is material to your inquiry, such section reads:

"All * * deposits * * of persons residing in this state shall be subject to taxation, excepting as provided in this section or as otherwise provided or exempted by this title. * *

Such property, subject to taxation, shall be entered on the classified tax list and duplicate of taxable property as prescribed in this title."

Section 5324, General Code, defines "deposits" as such term is used within the act:

"The term 'deposits' as so used, includes every deposit which the person owning, holding in trust, or having a beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account or certificate of running or other withdrawable stock, or otherwise, excepting (exceptions not applicable) * *"

I am assuming from the tenor of your inquiry that your requests as set forth in paragraphs 1 to 6, both inclusive, refer solely to returns of financial institu-

tions, since Section 5406, General Code, referred to in your request concerns such types of tax returns. Such section reads:

> "The deposits required to be returned by financial institutions pursuant to this chapter include all deposits as defined by section 5324 of the General Code to the extent that such deposits are made taxable by section 5328-1 of the General Code, excepting deposits belonging to the federal government or any instrumentality thereof; or to the state of Ohio or any county, municipal corporation, school district, township, or other subdivision thereof; or to any other financial institution; or to a dealer in intangibles or domestic insurance company; or to an institution used exclusively for charitable purposes."

In Section 5406, General Code, there is contained no limitation on the definition of deposits"; the only limitation on the taxability of such deposits contained in such section is by reason of certain types of ownership. By reason of such limitation as to ownership, I am taking the liberty of assuming that your request is limited to deposits when owned by taxpayers other than governmental agencies, financial institutions, dealers in intangibles, domestic insurance companies and institutions used exclusively for charitable purposes. As to the deposits of such types of institutions the discussion and conclusions herein contained are intended to have no application.

The legislature in its definition of "deposits" (Section 5324, General Code) has used the words "certificate of deposit" without defining its intended meaning. Such expression, however, is in common use in the business world and has a meaning which is understood by business and commercial men, without the aid of a dictionary. Such expression is defined in 5 Michie on Banks and Banking, page 548, Section 313:

> "A certificate of deposit is defined to be a written acknowledgment by a bank of the receipt of a sum of money which it promises to pay to the depositor, or to his order, or to some other person, or his order, whereby the relation of debtor and creditor between the bank and the depositor is created."

An examination of earlier court decisions in Ohio discloses that in the earlier banking practice the term "certificate of deposit" referred more specifically to a certificate evidencing what is now known as a "special deposit", or in other words, a certificate evidencing the fact that certain specific money had been deposited under an agreement with the bank that that particular money was to be redelivered upon return of the certificate. (See *State* vs. *Buttles,* Admr., 10 West. L. J., 309). However, in the more recent decisions it clearly appears that the term "certificate of deposit" is generally used by the courts in their decisions without definition as meaning a certificate evidencing a deposit of money with a bank which is repayable in current funds of the bank and either payable to the depositor (to him or his order) or to the bearer, upon presentation of the certificate. (See *Howe* vs. *Hartness,* 11 O. S., 449; *Citizens Savings Bank* vs. *Blakesley,* 42 O. S. 645; *Citizens National Bank* vs. *Brown,* 45 O. S. 39). I am unable to find that there has been any dispute in Ohio as to the meaning of this phrase, or attempt to limit it to certificates payable to a specific person, or to a certificate which is non-negotiable in form.

As stated by Hough, J., in *Keifer* vs. *State,* 106 O. S., 285, 289:

> "The legislature must be presumed to have used the term it used in its clear, unambiguous and generally accepted meaning unless there appears something in the text or surrounding circumstances clearly justifying a different meaning."

Of similar import are *Smith* vs. *Buch,* 119 O. S., 101, 105; *Morrow* vs. *Wittler,* 25, O. N. P. (N. S.) 85; Lewis' Sutherland Statutory Construction, Section 389.

There does not appear in Section 5324, General Code, or in any other part of the act any language which would clearly require a different meaning. I therefore answer your first inquiry in the affirmative.

Your second inquiry is directed at the condition arising where a depositor has included in his deposits checks on other financial institutions which have been conditionally credited but which have not yet been presented on the drawee and collected on the day for listing and assessing deposits as fixed by the Tax Commission in the manner prescribed by Section 5411-1, General Code. Referring again to the definition of "deposits" contained in Section 5324, General Code:

> " * * * includes every deposit which the person owning * * is entitled to withdraw in money * * * "

it appears that the intent of the legislature was to make the test of a deposit, whether the depositor had the right to withdraw in money. This test has been much adjudicated in the courts of various states of the nation. The question usually arises in the case of an insolvent bank which has credited checks drawn on other institutions to the account of the depositor, but closed its doors by reason of insolvency before the check had actually been presented for payment and paid by the drawee. It might be safely stated as a rule of law that if the condition of debtor and creditor arises between the bank and the depositor of the check at the time of its deposit of the check, or in other words, if the title to the check passes to the bank at such time, the proceeds of the check when credited to the account of a customer of the bank would be a "deposit" within the meaning of Section 5406.

When does the title to a check on another bank pass to the bank? The Circuit Court for Summit County, in the case of *Howe* vs. *Akron Savings Bank,* 16 O. C. C., (N. S.) 320, second syllabus, lays down the following rule:

> "Checks and drafts upon banks deposited with money and passed to the depositor's credit are to be treated as becoming the property of the bank, raising the relation of debtor and creditor, unless there is an express agreement that they are deposited for collection only."
> See also *Smith & Setron Co.* vs. *State ex rel.* 40 O. App. 32.

The question as to whether the title of a check passes to the bank seems to be one of intention between the parties. While there is some conflict among decisions of the courts in the various states, the majority of the jurisdictions follow the rule laid down in *Howe* vs. *Savings Bank. supra.* (See notes in 11, A. L. R., 1060; 16 A. L. R., 1084; 42 A. L. R., 492; 68 A. L. R., 725). There is more conflict among the decisions, when the regulation of the depository bank gives it the right to charge the account of the depositor in the event that such check is not paid on presentation for payment. In the case of *Howe* vs. *Savings Bank, supra,* the court held that the mere fact that the bank reserved the right to charge the amount of the check back to the customer's account in the event that such

check so deposited was dishonored upon presentment, did not in and of itself, prevent the passing of title to the check so deposited to the bank. The reasoning of the court in this case is that since the reservation contained in the by-laws which grants to the bank a right which was no greater than that already given to the bank by reason of the depositor's endorsement and the law of set-off such regulation was not inconsistent with the ownership of the check by the bank. The holding of the court in such case is the rule followed in the other states having a right of set-off and especially where the depositor has the right to draw against the account. See *Plumas County Bank* vs *Bank of Ridcout,* 165 Calif. 126; *Scott* vs. *W. H. McIntyre Company,* 93 Kans. 508; *Ayers* vs. *Farmers & Merchant's Bank,* 79 Mo. 421; *American Trust & Savings Bank* vs. *Austin,* 55 N. Y. Supp. 561; Notes in 11 A. L. R., 1067; 16 A. L. R., 1084; 42 A. L. R., 462; 68 A. L. R., 725; *Ramish* vs. *Fulton,* 41 O. App. 443.

There is a decided diversity of opinion among the courts of various jurisdictions on the effect of a by-law or regulation of the bank which provides in substance, that the depository bank takes the checks on other banks for collection only and the depositor is not permitted to draw against the funds credited until the checks are actually paid by the drawee bank. Most of the adjudicated cases take the view that if this regulation is actually adhered to the title to the check does not pass. A great number of cases take the view that when a bank which has such rule or regulation permits the withdrawal of funds against a credit of uncollected checks, such conduct amounts to a waiver of the regulation and shows that the intention of the parties is to vest the title in the bank. (See notes 11 A. L. R., 1060; 16 A. L. R., 1084; 42 A. L. R., 492 and 68 A. L. R., 725 wherein these cases are analyzed.)

My answer to your second inquiry cannot be categorical, but if the custom of the particular bank having such deposit rule is to permit withdrawals against uncollected checks credited to a customer's account, the funds credited to such account are a taxable deposit within the meaning of Sections 5324, 5328-1 and 5406, General Code. Otherwise they are not so taxable.

Your third inquiry is whether cashier's or official checks are taxable deposits. The terms "cashier's check" and "official check" are synonymous.

It is true that "cashier's checks" are not specifically mentioned in Section 5324, General Code, in defining deposits. Such statute, after enumerating certain types of deposits, contains the following language:

> "whether evidenced by * * or otherwise."

If it had been the intention of the legislature to limit the term "deposits" to those specifically mentioned, why should the language be "whether evidenced by * * or otherwise?" It is not to be presumed that these words were without meaning. The meaning of the phrase "or otherwise" has been construed by the courts to limit the matter to any other matters similar to those previously enumerated. *Rutherford* vs. *Railroad,* 35 O. S. 359; *Lane* vs. *State,* 39 O. S. 312; *Myers* vs. *Seaberger,* 45 O. S. 232. However, in the cases of *Kelly,* 32 U. S. 421 and *Railway* vs. *Jump,* 50 O. S. 651, the court gave such phrase a broader meaning and held it to mean "any other case."

In order to determine whether "cashier's checks" are deposits, consideration should be given to the nature of such instruments. Such instrument, and the relation of the parties thereon, is tersely described in the first paragraph of the syllabus of the case of *Drinkall* vs. *Movius State Bank,* 57 L. R. A. 341; 10 N. D. 11:

> "A cashier's check, being merely a bill of exchange drawn by a bank upon itself, and accepted in advance by the act of its issuance, is not subject to countermand, like an ordinary check, and the relations of the parties to such an instrument are analogous to those of the parties to a negotiable promissory note payable on demand."

While such type of check may be used and accepted in many instances as though it were a certified check, the elements of a certified check are not all present. There is no deposit supporting it. Such instrument is the direct obligation of the bank and not an accepted or secondary obligation as in the case of a "certified check." Such instrument has all the elements of a promissory note payable on demand but without interest. The obligation to pay to the legal holder on demand is present. It is for a sum certain in money. It is signed by the maker. It is a promise to pay when presented by the holder. In other words, it contains every element of a promissory note as in the Negotiable Instrument Law, Section 184, which is Section 8289, General Code, which reads:

> "Within the meaning of this chapter a negotiable promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. When a note is drawn to the maker's own order, it is not complete until indorsed by him."

While it is similar in some respects to a "certificate of deposit payable on demand" in that the obligation of the bank to pay on presentment is the same, yet the language of the contract set forth in the certificate of deposit is to the effect that such certificate represents a deposit which has been made by the person to whom issued. In the issuance of a "cashier's" or "official check" as such instrument is generally known, and as distinguished from corporate checks of the bank issued in payment of the obligations of the corporation, the bank receives a payment for the issuance of such negotiable paper, which is never treated either by the bank or the purchaser as a deposit, and in so far as I have been able to ascertain, the banks have never credited or paid interest. The intent of the parties is not to create a deposit and legal fiction will scarcely create a condition which the parties never intended to create.

I am therefore of the opinion that cashier's or official checks are not deposits within the contemplation of Section 5324, General Code, and therefore are not "taxable deposits" within the meaning of Section 5328-1, General Code.

Your fourth inquiry is as to whether accounts representing outstanding unpaid checks representing dividends declared by the bank are taxable deposits. The usual practice adopted by banks for the payment of divends declared by such institutions is to create a special commercial account in the commercial department of the bank and to issue and deliver to the stockholders checks against such account. The legal question raised by your inquiry is whether such practice constitutes a deposit, or in other words, whether the corporation can make a deposit with itself. It is evident from the language of the "Negotiable Instrument Law" that if such conduct constitutes a taxable deposit it would be taxable against the bank and not against the holder of the check. Section 8294, General Code, which is a part of the "Negotiable Instrument Law" reads:

"A check of itself *does not operate as an assignment of any part of the funds* to the credit of the drawer with the bank and the bank is not liable to the holder, unless it accepts or certifies the check." (Italics the writer's.)

These checks are not certified and such conduct would be a useless formality since the bank is already the primary obligor on the check. Such check does not assign any interest in the fund either legal or equitable, to the payee of the check. It is thus self-evident that such fund is not a taxable deposit of the payee of the check. Such type of check is tantamount to a promissory note payable on demand.

Since the legislature in its definition has used the language:

"The term 'deposits' as so used, includes *every deposit* which * * * "

it is evident that its intention was to adopt that meaning of "deposit" which is commonly used in business. In the common acceptation of the meaning of such word the idea is always contained of "something intrusted to the care of another." (See *State* vs. *Breckenridge,* 34 Okla., 649; Webster's International Dictionary). The transaction in question does not contain this element, which appears to be essential to a deposit. I therefore am of the opinion that where a bank transfers certain of its funds from the surplus and undivided profits fund to its own commercial department for the purpose of paying dividends therefrom by means of checks issued against such fund, such act is not "a deposit" and is not taxable as such.

Your fifth inquiry is as to whether outstanding "certified checks" are taxable deposits.

What is a certified check? It is an ordinary check drawn by a depositor on a bank against funds which the drawer has on deposit, and which the bank has agreed to honor upon presentment. In the usual course of practice a sum equal to the amount of the check certified is encumbered on the books of the bank and the drawer is not permitted to check against such sum so set aside until the certified check has been surrendered. *Blake* vs. *Hamilton Dime Savings Bank,* 79 O. S. 120; *Cincinnati Oyster & Fish Company* vs. *National Lafayette Bank,* 51 O. S. 106.

The legislature, in Section 8294, General Code, has intimated that the certification of a check is tantamount to the assignment of an interest in a deposit. Such section reads:

"A check does not of itself operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check."

The legal effect of a certification of a check is to substitute the payee of the check for the maker with respect to that portion of the maker's deposit evidenced by the certified check. The deposit remains a deposit but there is a partial change of ownership. *Blake* vs. *Dime Savings Bank, supra.*

I am therefore of the opinion that a certified check is evidence of a deposit and that the funds of which it is the evidence, constitute a taxable deposit within the meaning of Section 5328-1, General Code.

Your sixth inquiry is whether certain special accounts in a bank, which

accounts are established by the depositor for a specific purpose such as an escrow account, a sinking fund account, a bond and coupon account, etc., are taxable deposits within the meaning of the "Intangible Tax Law.".

An escrow is created by virtue of an agreement among three or more parties. The effect of such agreement is to establish one of the parties as the reciprocal agent of the remainder of the parties who deliver to the escrow agent the necessary instrumentalities to complete the transaction for which the escrow was established, together with specific instructions as to the method and manner of completing such transaction, which is usually a sale, barter, refinancing or distribution of property. In many of these escrows cash is deposited with the escrow agent to be used for a specific purpose upon the happening of a specified contingency. When this money is deposited in the bank it is sometimes deposited as a special account and the depositor is limited not by the rules of the bank, but by the escrow agreement, from withdrawing for any other purpose than that designated in such agreement.

A sinking fund deposit is a deposit which is required to be established by the terms of a trust deed in the nature of a mortgage, for the payment of the notes or bonds secured thereby, when they become due and payable. The agreement between the depositor and the bank does not prevent its withdrawal, but the restriction is contained in the trust indenture.

A bond and coupon account is of similar nature except that the purpose of the account is to pay the bonds and coupons as they severally mature on serial bond issues. Each of these accounts is of similar nature. The account is the property of the depositor, whether as escrow agent, trustee of a bond issue or otherwise. Upon the happening of some event, by virtue of his agreement with parties, he, or someone in his behalf is authorized by such agreement to withdraw the money *in cash,* and complete the escrow, pay the bonds and coupons then due, or pay off the entire bond issue, as the case may be. It is thus seen that these accounts do not differ substantially from the ordinary savings account in which a person deposits a certain portion of his earnings each week for a definite purpose which he seeks to accomplish, such as the purchase of a home, the expense of a pleasure trip or a vacation. It may in some instances have some of the characteristics of a time deposit, as in the case of a sinking fund which becomes withdrawable when the bonds become due and payable. The statute, in defining deposits (Section 5324, General Code) does not require that the "deposit" shall be payable on demand. The language is, " * * *is entitled to withdraw in money, whether on demand or not* * * ". These requirements of the statute are present in the accounts mentioned. While you do not so state, I assume that these accounts are evidenced as other similar accounts. I therefore am of the opinion that your sixth inquiry should be answered in the affirmative.

Your seventh inquiry raises the question as to the legal meaning of the language "shall be listed and assessed at the book value thereof" as contained in Section 5408, General Code. This section, in so far as is material to your inquiry, reads:

> "All the shares of the stockholders in a financial institution, located in this state * * the capital stock of which is divided into shares * * shall be listed and assessed *at the book value thereof,* and taxed only in the county where such financial institution is located." (Italics the writer's.)

The term "book value" of corporate stock has been held to mean the net worth of the corporation as determined from *all* of the books of a corporation or, in other words, the book value of all assets less the book value of all liabilities. *Brookins* vs. *Scudder,* 295 Mo. 494; *Russel Mfg. Co.* vs. *Hardware Co.* 62 Atl. (N. J. Eq.) 421; *Early* vs. *Moor,* 144 N. E. 108 (Mass.); *Lane* vs. *Barnard,* 173 N. Y. Supp. 714; *Elhard* vs. *Rott,* 36 N. D. 221; *Curley* vs. *Woodbury,* 177 N. C. 70; *People ex rel. Ins. Co.* vs. *Coleman,* 107 N. Y. 541; *Jennerman* vs. *Bucher,* 186 Mo. App. 179.

There is some discrepancy among the decisions of the various states as to whether the item of good will should be included as an asset in determining such book value. However, under the Ohio Banking Act (Sections 710-1 et seq. General Code) such item is never an asset.

In the same act of which Section 5408, General Code, is a part, the legislature has defined the value of shares of stock as follows:

> " * * *For the purposes of this act,* the value of the issued and outstanding shares of stock of *any such corporation* shall be deemed to be the total value, as shown by the books of the company of its capital, surplus, whether earned or unearned, undivided profits, and reserves, but exclusive of (a) proper and reasonable reserves for depreciation, and depletion as determined by the tax commission, (b) taxes due and payable during the year for which such report was made, (c) such item of good will as set up in the annual report of the corporation when such report is accompanied by a certified balance sheet showing such item of good will carried as an asset on the books of the company, * * and (d) such further amount as upon satisfactory proof furnished by the corporation, the tax commission may find to represent the amount, if any, by which the value of the assets * * of the corporation as carried on its books exceeds the fair value thereof. * * " (Italics the writer's.)

See Section 5498, General Code.

It is to be noted that the legislature uses the language "for the purposes of this act", however, Section 5498, General Code, is a part of Chapter 8, having reference to corporation excise taxes and is an amendment of a former section bearing a similar number.

I do not believe that it was the intention of the legislature in the enactment of this section as a part of Am. S. B. No. 323 to include this definition for the purposes of that act but rather to amend such section in other respects, especially in view of the fact that such definition is identical with the definition contained in the former section. However, in view of the language contained in this definition, it clearly appears that the legislature, in using the word "book value" intended to use that term as it was ordinarily used in bookkeeping practice.

Section 710-111 General Code, restricts the method by which assets and liabilities may be carried on the books of a bank. Such section, in so far as material, reads:

> " * * Securities shall be charged on books at cost. All securities as enumerated above, having a fixed maturity shall be charged and entered upon the books of the bank at their cost to the bank, and when a premium is paid therefor an annual amortization charge shall be made thereon so as to bring the cost of same to the face value of said bonds at matur-

ity. The superintendent of banks shall have the power to require any security to be charged down to such sum as in his judgment represents its value. The superintendent of banks may order any securities which he deems undesirable removed from the assets of a bank."

The investments must be carried at cost, except when the superintendent of banks has ordered such assets to be reduced to their actual value or entirely removed from the assets of the bank. The only discretion left in the bank as to the accounting system is as to items ordinarily known as income and expense, furniture and equipment. It is evident that, as to any items of investment the carrying of a reserve would be equivalent to carrying the item among its assets at a sum less than cost. And likewise, when the balance sheet of the bank does not reflect its expense as accrued before actually paid such statement would not be a true statement of the condition of the bank. It necessarily purports to show the financial condition of the bank as of less value than actual worth and the value of the shares less than actual value. It is apparent that any reserve for an expense item is inconsistent with a method of accounting in which the earnings of the company are not reflected on the balance sheet of the company. It is likewise evident that reserves for taxes, either current or delinquent, should not appear on the balance sheet and should not be taken into consideration in fixing the value of the shares of a bank when the earnings accrued but not paid, are not similarly reflected on the accounting records of the bank.

The fundamental rule in preparing a balance sheet of any business or corporation is that it must reflect or set forth the true financial condition of the corporation. Section 710-111, General Code, supra, sets forth the manner in which investment assets shall be carried on the books of the bank. It further provides that, when the superintendent of banks so requires, the assets of the bank must be reduced or entirely charged off. When under the authority of such section he has ordered certain items of assets to be eliminated from the assets of the bank, and such order is complied with, the items are no longer assets of the bank for any purpose and, therefore, could not be considered as assets for the purpose of determining the "book value" of the shares. When such items of assets are no longer "book assets" of the bank they are not to be considered for the purpose of determining the solvency of the bank. A similar result would exist when the superintendent of banks ordered the value of certain assets to be reduced from cost to the actual value. In each of these cases the value does not appear on the books of the company and necessarily would not be reflected in the book value of the shares. It further appears that the banking department during the last year has adopted a practice somewhat as follows: Whenever items of investment have so decreased in value that, under normal conditions, the rules of the banking department require an order that such items be either reduced in value or stricken from the assets, the banking department orders the bank either to decrease or deduct such items from its assets or to set up a reserve in an amount equal to the total amount of such deductions. Before such order is made by the Superintendent of banks it is necessary that he find that such value does not exist.

Section 710-111, General Code, does not specifically authorize such reserve; it rather orders that the amount of such deduction be made from the valuation of the assets. It hardly appears equitable for the State of Ohio to say through one of its agencies that a valuation does not exist, yet through its agency for the purposes of taxation say that the same item exists for the purpose of permitting the state to tax it.

I am therefore of the opinion that, even though under the method of bookkeeping used by banking institutions in Ohio, reserves for contingencies and reserves for bills payable are an inconsistency, and should not be reflected on the books of the company, yet where the superintendent of banks orders a bank either to decrease the valuation of its assets to the extent of a sum specified or to set up a reserve to the extent of the sum by which such assets should be depreciated, such reserve must be taken into consideration in computing the book value of the shares of the bank.

Specifically answering your inquiries it is my opinion:

1. The words "taxable deposits" as used in the so-called "Intangible Tax Law" include certificates of deposit, whether negotiable or non-negotiable, certified checks, accounts deposited with a bank for a particular purpose, such as escrow, sinking fund, bond and coupon accounts and deposits created by deposit of checks on other banks against which the depositor has the right to draw.

2. The term "taxable deposits" as used in the so-called "Intangible Tax Law" does not include checks endorsed to a bank for collection, or those in which the title to the check does not pass to the bank, and against which the depositor does not have the right to draw, or sums of money deposited by the bank with its own checking department against which dividend checks have been drawn but have not yet been presented for payment on tax listing day.

3. When a bank maintains its accounting records as required by section 710-111, General Code, such corporation in determining the book value of its shares, may not deduct from the capital and surplus reserves for taxes, whether due and payable, but when it has set up a reserve at the direction of the Superintendent of Banks, who had directed that a certain sum be either deducted from its assets or a reserve be set up equal to such sum, such item of reserve should be considered and deducted from the value of the bank's investment assets in determining the book value of the shares of the bank for the purposes of taxation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4677.

DIRECTOR OF HIGHWAYS—MAY LEASE EQUIPMENT FOR ROAD REPAIRS FROM MOTOR VEHICLES AND GASOLINE TAX FUNDS —EXCEPTION REGARDING REMOVAL OF SNOW—COMPETITIVE BIDDING NOT REQUIRED.

SYLLABUS:

The director of highways has the authority to lease equipment necessary for the maintenance of state highways and the cost thereof may be paid out of the funds derived by the state highway department from the registration of motor vehicles and from the gasoline excise tax levied by virtue of section 5527, *General*

Such director, in leasing such equipment, is not required to comply with sections 1226-1 *and* 1226-2, *General Code, which relate to competitive bidding.*

Such director has no authority to lease equipment necessary for the removal of snow from the state highways.