

2062.

APPROVAL, BONDS OF CLEVELAND CITY SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, December 27, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2063.

APPROVAL, BONDS OF TIPPECANOE VILLAGE SCHOOL DISTRICT, MIAMI COUNTY, OHIO—\$1,000.00.

COLUMBUS, OHIO, December 27, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2064.

APPROVAL, BONDS OF SHEFFIELD LAKE VILLAGE SCHOOL DISTRICT, LORAIN COUNTY, OHIO—\$7,200.00.

COLUMBUS, OHIO, December 27, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2065.

OHIO RECOVERY ACT—GOVERNOR AUTHORIZED TO APPROVE CODE REGULATIONS AFFECTING INTRASTATE COMMERCE WHICH ADD TO OR AMPLIFY FEDERAL CODES.

SYLLABUS:

The Governor of Ohio may approve code regulations under the Ohio Recovery Act as affecting intrastate commerce which amplify or add to federal codes filed under section 3 (a) of the Ohio Recovery Act. He may not amend such federal codes in the sense that an amendment thereto might be made which would be inconsistent with such national code provisions.

COLUMBUS, OHIO, December 28, 1933.

HON. O. W. L. COFFIN, *Asst. Director of Commerce for Ohio, Recovery Act, Columbus, Ohio.*

DEAR SIR:—Your request for my opinion reads as follows:

"May I request that you give us an opinion as to whether or not additions, amplifications or amendments or any other change may be made to a National Code at the time it is exemplified and filed with the Governor of Ohio."

The sections of the Ohio Recovery Act which determine the powers of the Governor to approve and place in effect so-called codes of fair competition in the state of Ohio, read as follows:

"Section 1. The existence in this state of the present acute economic emergency, and the effects and certain causes thereof as declared in section (I) of title I of the national industrial recovery act of the congress of the United States, and in section (I) of title I of this act of the congress entitled 'An act to relieve the existing national economic emergency, by increasing agricultural purchasing power,' etc., approved May 12, 1933, are hereby recognized; and it is hereby declared that said emergency the causes and effects thereof, as so declared, relate as well to commerce in this state wholly intrastate in character as to interstate and foreign commerce and transactions affecting interstate and foreign commerce carried on in this state. It is hereby declared to be the policy of this state to cooperate with the congress of the United States in the furtherance of the objects and purposes declared in each of said acts of congress, and each and every provision of this act shall be construed in accordance with the policy so declared, and in no wise so as to conflict with any of the provisions of said acts of congress or with any action of the President of the United States or of the secretary of agriculture, or any other federal agency lawfully taken in pursuance of either of them."

"Section 3(a). ***** When and if any such code shall have been approved by the President of the United States, pursuant to section 3 (a) of title I of the national industrial recovery act, and a copy thereof, including any conditions imposed by the president and any exceptions to and exemptions from the provisions thereof, approved by the president, and duly certified or otherwise exemplified by the president, or such officer or agency as the president shall have designated for the purpose, shall have been filed with the governor, the provisions thereof shall be the standards of fair competition for such trade, or industry, or subdivision thereof, and for all persons engaged therein in this state as regards intrastate commerce therein and whether or not affecting interstate or foreign commerce; and such code or codes which so approved and with such conditions, exceptions and exemptions, and any action taken in compliance therewith shall be lawful, anything in the common or statute law of this state to the contrary notwithstanding."

It is my opinion that the words "such conditions, exceptions and exemptions" at the end of this paragraph, refer exclusively to the words "conditions imposed by the president and any exceptions to and exemptions from the provisions thereof, approved by the president."

"Section 3 (b). In case any code or codes of fair competition agreed upon pursuant to paragraph (a) of this section shall affect intrastate com-

merce in this state only, and not be subject to the approval of the president by virtue of section 3 (a) of title I of the national industrial recovery act, then and in such case, upon the application to the governor by one or more trade or industrial associations or groups, the governor may approve any such code or codes of fair competition in intrastate commerce in this state for the trade or industry or subdivision thereof, represented by the applicant or applicants; * * *.”

Section 3 (b) provides further in the third paragraph thereof:

“The provisions of any code of fair competition in intrastate commerce approved by the governor, pursuant to paragraph (b) of this section, for any trade, industry, or subdivision thereof, shall, to the extent not inconsistent with any lawful action of the president pursuant to any provision of title I of the national industrial recovery act, whether taken prior to the approval of such code by the governor, or thereafter, be the standards of fair competition for such trade, or industry, or subdivision, thereof, and for all persons engaged therein in intrastate commerce in this state; * * *.”

It is significant to note that this particular paragraph is the only place in which specific mention is made of a situation in which there might be a conflict between federal and state codes of fair competition and for that reason its wording is of importance. The only limitation contained in this paragraph upon the Governor's authority to approve codes of fair competition as applying to strictly intrastate commerce is a statement that such provision shall not be inconsistent with any lawful action of the President under the National Industrial Recovery Act. The legislature also specifically provides that this action of the Governor may be taken prior to the approval of such national code or subsequent thereto.

Section 7 of the Ohio Recovery Act, without quoting it, contains a provision permitting the Governor to expressly license industries or trades engaged in intrastate commerce where they have persistently violated provisions of a code of fair competition. The only significance to be attached to this section is that the Governor's licensing power is therein limited to intrastate commerce, and by inference, seems to indicate that the state legislature intended at the time of the passage of the act to retain the control of intrastate commerce which it has always had, and had no intention of delegating power to control such commerce to the federal government through the medium of federal codes of fair competition.

Section 6 of the Ohio Recovery Act reads:

“The courts of common pleas are hereby invested with jurisdiction, at the suit of the prosecuting attorney under the direction of the attorney general to prevent and restrain violations of any code of fair competition approved or prescribed under this act, or of any marketing agreement entered into under this act. It shall be the duty of the prosecuting attorney of any county, under the direction of the attorney general, to institute proceedings in equity to prevent and restrain such violation. Any person deeming himself aggrieved by any such violation may, in writing, request the attorney general to cause such proceedings to be instituted.”

This section is significant in interpreting the entire act in that it specifically retains jurisdiction in the state courts and places the duty of enforcement upon the state and county authorities.

It is my opinion that an approved federal code of fair competition properly certified or exemplified by the President of the United States becomes the Ohio code of fair competition of that particular trade or industry on the proper filing thereof under the provisions of Section 3(a) of the Ohio Recovery Act. It naturally follows that the provisions of such code become applicable to intrastate commerce in Ohio within that trade or industry.

Beginning with Section 1 of the Ohio Recovery Act, which defines the purpose thereof, and throughout its entirety, the legislature of Ohio made it clear that no Ohio laws or codes of fair competition may be permitted to *conflict* with the provisions of a federal code properly filed with the Governor of Ohio pursuant to Section 3(a) of the Ohio Recovery Act. The act does provide, however, that the Governor of Ohio may approve other code provisions affecting intrastate commerce in Ohio, whether contained in such federal codes or not, so long as such provisions do not conflict with the provisions of the federal code for that trade or industry. While the legislature provided that Ohio could not pass laws or approve codes of fair competition in conflict with the national codes, it did reserve to the Governor of Ohio the right to regulate intrastate commerce within this state and the right to enforce all regulations affecting intrastate commerce without reservation.

It therefore follows in specific answer to your question that the Governor of Ohio may approve code regulations under the Ohio Recovery Act as affecting intrastate commerce which amplify or add to federal codes filed under Section 3(a) of the Ohio Recovery Act. He may not amend such federal codes in the sense that an amendment thereto might be made which would be inconsistent with such national code provisions.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2066.

APPROVAL, BONDS OF SEBRING EXEMPTED VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$3,561.04.

COLUMBUS, OHIO, December 28, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2067.

APPROVAL, BONDS OF SPRINGFIELD CITY SCHOOL DISTRICT, CLARK COUNTY, OHIO—\$25,898.46.

COLUMBUS, OHIO, December 28, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.