

investment trust receive dividends derived from the stocks held by the depositary and are entitled, upon termination of the trust, to receive a proportionate share of the property held or proceeds from its sale, it would seem that the holders of the investment trust shares should be liable under the principle discussed. This liability is unaffected by the fact that some one else may vote the stock or receive the dividends in the first instance. *Davis v. Stevens*, 7 Fed. Cas. p. 177 at 178.

You have not indicated any particular state bank whose stock underlies the investment trust in question, and, of course, it is impossible here to take up and construe each state's particular enactment. However, as is disclosed by the cases discussed above, there is a tendency on the part of state courts, in construing their statutes, to follow the constructions which have been placed upon the federal statutes by the federal courts. Suffice it to say now, therefore, that, in any case where a state statute, in general terms, imposes such additional liability upon the stockholders of a state bank, the state courts, I believe, would be inclined to construe such statute in the manner in which the federal statutes have been construed.

In conclusion, may I quote from *Ohio Valley National Bank v. Hulitt*, 204 U. S. 162, 167, where the United States Supreme Court reiterated the following statement which it had made previously in *Pauly v. State Loan and Trust Company*, 165 U. S. 606:

"The Courts will look at the relations of the parties as they actually are, or as, by reason of their conduct, they must be assumed to be, for the protection of creditors."

Answering your question specifically, I am of the opinion that the shareholders of a fixed investment trust may be held for the statutory double liability where the depositary holds stock of a national bank, and that states having similar enactments in reference to state banks, would be inclined to construe their statutes to obtain a similar conclusion. Of course, it is conceivable that some particular state statute might, in its terms, vary sufficiently from the federal statute as to warrant a different result.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3098.

BOARD OF OPTOMETRY—OFFICE—RECORDS OF BOARD REQUIRED
TO BE IN COLUMBUS WHERE THEY SHALL BE OPEN TO PUBLIC
INSPECTION.

SYLLABUS:

1. *The record of the proceedings of the State Board of Optometry, a register of persons registered as optometrists and a register of licenses revoked by such board, are required to be kept at the office of the board at Columbus where such records shall be open to public inspection.*

2. *In the event such records are so kept at the office of the Department*

of Education at Columbus, the requirements of law as to maintenance of an office at Columbus are complied with.

COLUMBUS, OHIO, March 28, 1931.

The Ohio State Board of Optometry, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

“As Secretary of this Board, I would like to ask you to render an opinion clarifying and setting forth the limitations of the wording of the following sentence, found in Section 1295-30 of the State Optometry Law, the fourth paragraph, under the heading ‘Seal; Office Located’:

‘The board shall adopt a seal and certificate of suitable design and shall have an office at Columbus in this state, where examinations may be held and where all its permanent records shall be open to public inspection.’

By an opinion rendered by you a short time ago, it was declared that in no way could the law be construed as limiting the secretaryship to a Columbus resident. An attempt is now being made to embarrass the writer by demanding a strict adherence to the letter of the law as italicized above.

Requisition has been entered with the State Department of Education, under which we are housed, for the office space the law grants us. If this is refused, what are we to do?

What constitutes the permanent records mentioned above, and where can the dividing line be drawn, for keeping data at the hand of the Secretary, both for himself, and successors, in order to carry on his duties efficiently?

The minute books of the two predecessors in this office have not been made in duplicate. If these are to be considered as a part of the permanent records, and housed in Columbus, they will be accessible to the Secretary only at expensive cost of trips to the Capitol city, each time it becomes necessary to go into their records for vital data.

There has been prepared by the retiring Secretary a set of record cards setting forth the name, address, number, type of license granted, payments from year to year of renewal fees, revocation or suspension, if any, and lastly, where it has taken place, death of the licensee, same to be submitted to the Department of Education for housing. It was his opinion that such a set of records would satisfy the provisions of the law, and constitute the total ‘all permanent records’ thus required. Any other data in the files may at any time become necessary for the information of the Secretary as inquiries arise demanding answers. Incidentally, the set of records just mentioned is a duplicate set.

The Board employs, and has for a number of years, a very efficient inspector, residing in Columbus. That person maintains an office at home for carrying on the duties appertaining to the office. Will such an office satisfy the provisions of the law, or must said office be situated in the State House? Such records as are ruled ‘permanent’ could there be kept under intelligent supervision for public inspection.

A legislative attempt is being made to amend the law, and delete the words ‘at Columbus,’ but those interested in embarrassing the present

incumbent, to the point of resigning, and any future incumbents duly elected, but not residing in Columbus, seem to have the amendment blocked in the 'Health Committee' of the House. If your opinion can be rendered along the lines set forth above the amendment would become unnecessary."

Your inquiry resolves itself into the following questions:

1. Is it mandatory that the Ohio State Board of Optometry maintain an office in Columbus?
2. What is meant by the term "permanent records" as used in Section 1295-30, General Code, providing that such records shall be kept at the office of the board?
3. In the event it is required that an office be maintained at Columbus, must such office be in the State House?

With respect to the question as to whether or not it is mandatory that an office be maintained in Columbus, Section 1295-30, General Code, quoted in part in your communication, expressly provides that the board "shall have an office at Columbus in this state." It is unnecessary to cite authorities in support of the principle of statutory construction that the word "shall" is to be construed as mandatory unless the context of the statute in which it is used is such as to evince a contrary legislative intent. I find nothing in the statute to indicate that the legislature meant other than to say that an office shall be established.

It is therefore my opinion in specific answer to question number one that the provision of Section 1295-30, General Code, that the State Board of Optometry shall have an office at Columbus is mandatory.

In determining just what records are required to be kept at the Columbus office of your board, it is pertinent to consider the provisions of Section 1295-27, General Code, which provides as follows:

"The state board of optometry shall have an official seal and shall keep a record of its proceedings, a register of persons registered as optometrists and register of licenses by it revoked.

Its record shall be open to public inspection, and it shall keep on file all examination papers for a period of ninety days after each examination. A transcript of an entry in such records, certified by the secretary under the seal of the board, shall be evidence of the facts therein stated. The board shall annually, on or before the first day of January, make a report to the governor of all its official acts during the preceding year, and of its receipts and disbursements, and a full and complete report of the conditions of optometry in this state."

This is the only section of the General Code defining the records which shall be kept by your board and it is obvious therefore that the reference in Section 1295-30, General Code, to your board's "permanent records" is to the record of your proceedings, the register of persons registered as optometrists and register of licenses revoked by your board.

Coming now to your inquiry as to whether or not the office of your board must be in the State House, there are no provisions contained in the General Code, requiring that all state offices be located therein. Attention is directed to the provisions of Section 154-40, General Code, which authorizes the superintendent of public works "to lease office space in buildings for the use of the

state government, or any department, office or institution thereof." The offices of numerous state boards are located in Columbus in the various privately owned office buildings of the city. It is my opinion that there is no requirement that your office be located in the State House.

Your attention is further directed to the provisions of Section 1295-24, General Code, which provides that your board "shall make rules and regulations governing the practice of optometry and such other rules as may be necessary to carry out the provisions of this chapter." The legislature has manifestly seen fit to vest considerable discretion in your board as to the detailed manner in which its activities shall be carried out. I am advised that it has been the custom for the secretary to transact most of the business of the board from his residence in whatever city in Ohio he may be located. Such a procedure is obviously not violative of any provision of law relating to your board.

By virtue of Section 154-46, General Code, your board is attached to the Department of Education. I think, therefore, that your board would undoubtedly be justified in the interest of economy in housing its permanent records in the office of the Department of Education, where they may be open to the public, thereby relieving the state of the necessity of paying office rent. The obvious purpose of the requirement that your records be kept in your Columbus office is to provide that they be available for inspection by the public in a convenient location. The office of the Department of Education would, in my opinion, meet this requirement. Furthermore, in lieu of compensating its secretary to a sufficient extent to warrant him coming to Columbus and devoting his full time to the duties of his office, if your board should decide to have such part of its permanent records as may be needed by its secretary copied, such a procedure may very probably be more economical. It is my opinion that these are matters to be determined by your board in the exercise of its sound discretion with a view of administering the provisions of the law with reference to the practice of optometry in the most efficient and economical manner.

Summarizing, it is my opinion that:

1. The record of the proceedings of the State Board of Optometry, a register of persons registered as optometrists and a register of licenses revoked by such board, are required to be kept at the office of the board at Columbus where such records shall be open to public inspection.
2. In the event such records are so kept at the office of the Department of Education at Columbus, the requirements of law as to maintenance of an office at Columbus are complied with.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3099.

SERVING WITNESSES—SHERIFF'S CHARGE—WHAT COSTS FOR MILEAGE ALLOWED WHEN SERVING MORE THAN ONE WITNESS IN A COMMUNITY.

SYLLABUS:

Under the provisions of Section 2845, General Code, a sheriff, in serving witnesses not named in the same writ, should charge as costs mileage from the court house to where each witness is found and return.