of Baltimore City, Maryland, for a reduction in the annual rental to be paid by said company upon the lease of Miami and Erie Canal lands in Miami County, Ohio, which canal lands said company is now occupying and using for railroad purposes.

The lease here in question, which bears serial number M&E 442, was executed under date of January 28, 1930, for a term of fifteen years, expiring January 27, 1945, and the same provided for an annual rental of $252.00.

The application for a reduction in the amount of the annual rental provided for in this lease was filed with you on or about November 27, 1933, pursuant to the provisions of House Bill No. 467, which was passed by the 90th General Assembly under date of June 8, 1933, and which became effective on the 11th day of October, 1933. 115 O. L. 512. By the provisions of this act, the Superintendent of Public Works, with the approval of the Governor and Attorney General, is authorized to make a rental adjustment on existing canal land leases for a period of one year in advance beginning with the next semiannual rental payment date, provided for in such leases. Such rental readjustment can be made by the Superintendent of Public Works only upon an application therefor made by the lessee in the manner and form provided for in section 3 of said act, in and by which application, among other things, the lessee is required to set forth the reasons why the annual rental provided for in said lease should be revised. In the application filed by the lessee with you as Superintendent of Public Works, the reason assigned for the reduction in the annual rental provided for in this lease, requested by the lessee, is "economic conditions affecting railroad earnings." Acting upon this application, you have made a finding in and by which you have granted to said lessee a reduction in the annual rental under said lease for the period of time between May 1, 1934, and May 1, 1935, and have fixed the annual rental to be paid by said lessee for this period at the sum of $201.60.

Upon examination of the proceedings relating to this matter, including the application for the reduction in rental, above referred to, I am inclined to the view that they are in substantial conformity with the statutory provisions outlined in House Bill No. 467 and the same are accordingly hereby approved by me as to legality and form, as is evidenced by my approval endorsed in and upon the resolution of approval which is made a part of the proceedings relating to the reduction of said rental, and upon the copies thereof, all of which, together with the duplicate copies of your finding and the application, are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2684.

RECEIVER—FOR NATIONAL BANK NOT ENTITLED TO ABATEMENT OF PENALTIES AND INTEREST ON DELINQUENT TAXES.

SYLLABUS:

When a receiver is appointed by the Comptroller of the Currency, for an insolvent bank which is the owner of parcels of real estate upon which the taxes are, or become delinquent, such receiver is not entitled to an abatement of

the penalties and interest accruing thereon, or to pay the amount of such taxes without penalties or interest, except as pursuant to the provisions of Amended Senate Bill No. 42, enacted by the 90th General Assembly (115 O. L. 161) as amended by Amended Senate Bill No. 23, enacted by such body at its Second Special Session.

COLUMBUS, OHIO, May 18, 1934.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Seneca County, Tiffin, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, reading:

> "The Union National Bank of Fostoria, Ohio, is being liquidated by a receiver appointed by the Comptroller of the Treasury. The bank for a number of years has held a number of pieces of real estate in this county of Seneca, upon which taxes are now in arrears, and it is probable that the liquidation of the bank will not proceed with such speed as to allow the receiver to pay the current taxes. The receiver has insisted that it will be necessary for him to pay only the amount of taxes due without penalties or interest, seeming to rely upon a request or ruling of the Comptroller of the Treasury that a receiver can not pay interest or penalties.
>
> Has there been such a ruling on this question in Ohio, and if not, will you please let me have your opinion as to whether or not the Treasurer may accept only the amount of the taxes due, and thereby discharge the tax lien?"

It has been established by the courts that when a receiver is appointed for a national bank, he receives the assets of such bank as a trust fund for the benefit of creditors, subject to all claims, rights and demands that might have been asserted against the bank had such receiver not been appointed.

Scott vs. *Armstrong,* 146 U. S. 499, 507
Brown vs. *Schleier,* 112 Fed. 577
Fourth Street Bank vs. *Yardley,* 165 U. S. 634, 653
Skeed vs. *Fillinghast,* 195 Fed. 1, 5
Rankin vs. *City Nat. Bank,* 208 U. S. 541, 546.

I do not believe that it will be seriously contended that the state may not tax the real estate owned by a national bank.

See:

Section 5219 R. S. U. S.
McCulloch vs. *Maryland,* 4 Wheat. 316
Stapylton vs. *Taggart, Tax Collector,* 91 Fed. 93
Osborn vs. *Bank,* 9 Wheaton, 738
Weston vs. *City Council of Charleston,* 2 Pet.

From an examination of the decisions of the Federal Courts there seems to be little question but that a receiver of a national bank is liable for interest.

National Bank vs. *Bank*, 94 U. S. 437.
White vs. *Knox*, 111 U. S. 784
Armstrong vs. *American Exchange National Bank*, 133 U. S. 433
Bain vs. *Peterson*, 44 Fed. 307
Chemical National Bank vs. *Bailey*, 12 Blatchford, 480.

There is an express provision in the Federal Bankruptcy Act which prevents the recovery of a penalty on debts owing to a state or county, yet such section expressly authorizes the recovery of interest. Section 57j, of the Bankruptcy Act (U. S. Comp. Stat. Sec. 9641) reads:

> "Debts owing to the United States, a state, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty arose, with reasonable and actual costs occasioned thereby *and such interest as may have accrued thereon according to law.*" (Italics the writer's.)

In the case of *United States* vs. *Childs*, 266 U. S. 304, the Supreme Court had before it the question as to whether interest at the rate of one percent per month in addition to a five percent penalty imposed by Section 14a of the Act of September 8, 1916, on delinquent installments of income tax payments could be allowed in a bankruptcy proceeding. The Circuit Court of Appeals held the tax to be a debt and that one percent per month constituted a penalty, and refused to allow it in the bankruptcy proceedings, but rather allowed interest at the rate of six percent. The Supreme Court reversed the Circuit Court of Appeals, and ordered the one percent per month to be allowed as interest. In such case, both in the lower court and in the Supreme Court, the courts held that interest was collectible in the bankruptcy proceeding. The only question was whether the interest, as authorized by the statute, was so excessive as to be tantamount to a penalty, and as such, was forbidden by the statute.

In the case of *In re. Brown*, 41 Fed., 2d, 228, the court held that in a bankruptcy proceeding the county treasurer was entitled to collect taxes due, plus interest to the date of payment, but without penalty, on the bankrupt's realty. See also *In re. Portage Rubber Co.* 288 Fed., 463.

In the case of *In re. Estes*, 2 Fed. Supp. 576, the court had before it a question concerning the liability of the trustee in bankruptcy for the payment of taxes on real estate. Such court, at page 577, said:

> "The liability for taxes must be determined by the law of the state unless in conflict with some federal law or decision of the Supreme Court."

Since even in bankruptcy actions, interest as provided by law, is required to be paid, and I have found no statutory provisions which would exempt a liquidating receiver of a national bank from the payment of interest on taxes levied and assessed against lands owned by a national bank of which he is receiver, I am of the opinion that a receiver of a national bank is liable for such interest.

Since the laws of the state not only make the real property liable for the taxes and interest but for a penalty as well, in the event that taxes thereon become

delinquent, there remains a question as to whether there is any inhibitory provision either in the state or federal law which would release the receiver of a national bank from the payment of a penalty imposed by reason of failure to pay the real estate taxes within the time required by law.

In 1 Clark on Receivers, 2d Ed., Section 670, it is stated:

> "Receivers may have to pay penalties for failure to pay real estate taxes the same as the owner may have to pay such penalties because such penalties usually fasten themselves on real estate as liens."

In *Bright* vs. *State of Arkansas,* 249 Fed. 953, the court held, as stated in the first paragraph of the headnotes:

> "Real property of an insolvent railroad company, taxable as such under Kirby's Ark. Dig. §§6941, 6942, 6945, cannot escape penalties because the entire property was in the hands of receivers appointed under order of court to take possession of property for benefit of creditors."

On page 955 of such opinion, the court reasons:

> "They (the penalties) arose and fastened themselves as liens upon the real estate of the corporation, now in the hands of the receivers, by virtue and in accordance with the statutes of the state, and, if the receivers and the creditors they represent are to have the benefit of that real estate, there is no better reason why they should escape the payment of the penalties than there is why an individual, who has been unable to pay his tax upon his homestead when due, should escape the payment of the legal penalty for that failure. The real property of an insolvent corporation is not relieved from the penalties lawfully attaching to it for failure to pay the taxes thereon by its seizure by receivers on the order of the court for the purpose of applying it to the payment of its debts, * * *"

In the seventh branch of the headnotes of *First National Bank of Houston* vs. *Ewing,* 103 Fed. 169, it is stated:

> "Taxes accruing against the property of an insolvent railroad company constitute a preferred claim, and are entitled to be paid in full, *including interest, penalties,* and costs, before any other claims, except the judicial costs."

In that case the property was in the hands of a receiver appointed by the federal court. My examination of the federal statutes does not disclose any provision which places a receiver of a national bank on any greater plane than a receiver of any other corporation appointed by a federal court.

A receiver of a national bank represents the bank, its stockholders and creditors, and not the United States Government. *Brown* vs. *Schleier,* 118 Fed. 981; id 112 Fed. 577; *King* vs. *Pomeroy,* 121 Fed 287. The duties and powers of such receiver are set forth in Section 5234, R. S., U. S. C. Title 12, Section 192, as follows:

"Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct, and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings."

An examination of the statutes of Ohio fails to disclose any provision of law authorizing a receiver to pay taxes in any other manner than could any other taxpayer.

From the tenor of your request, I do not understand your inquiry to be whether the receiver may evade the penalties and interest upon compliance with the provisions of Amended Senate Bill No. 42 enacted by the 90th General Assembly as amended by Amended Senate Bill No. 23 of the Second Special Session of such body. Since a receiver of a national bank as well as any other receiver may become a person, firm or corporation legally authorized to pay real property taxes within the meaning of such act, I do not desire to be understood as holding that a receiver can not take advantage of the provisions of such act when duly authorized.

When a receiver is appointed by the Comptroller of the Currency, for an insolvent national bank which is the owner of parcels of real estate upon which the taxes are or become delinquent, such receiver is not entitled to an abatement of the penalties and interest accruing thereon, or to pay the amount of such taxes without penalties or interest, except as pursuant to the provisions of Amended Senate Bill No. 42 enacted by the 90th General Assembly (115 O. L. 161) as amended by Amended Senate Bill No. 23, enacted by such body at its Second Special Session.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2685.

APPROVAL—PROCEEDINGS RELATING TO APPLICATION OF EDITH M. STOKER AND ERMA STOKER ARMSTRONG FOR REDUCTION IN RENTAL UPON LEASE EXECUTED TO ANNA STOKER.

COLUMBUS, OHIO, May 18, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval your finding and report on the application of Edith M. Stoker and Erma Stoker Armstrong