

resolution until such financial statement properly prepared and verified was before the board.

It also is apparent from the financial statement that the items therein are not entirely correct, as on March 1, 1921, there were doubtless funds in the treasury from taxes received from the February settlement of that year. If there were no such funds at that time the board could not have operated its schools for the remainder of the school year, viz., from and after March 1, 1921, without rendering it necessary for the financial statement to show an estimated deficit for that period.

Inasmuch as no proper financial statement as required by the provisions of said house bill was before the board of education at the time the bond resolution was adopted, the board was without authority to adopt said resolution at that time.

I am therefore of the opinion that the bonds under consideration are not valid obligations of the school district and advise the department of industrial relations not to accept the same.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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2431.

**BANKS AND BANKING—SECTION 710-37 G. C. NOT APPLICABLE TO NATIONAL BANKS—SECTION 710-150 G. C. MUST BE COMPLIED WITH IF NATIONAL BANKS TRANSACT A TRUST BUSINESS IN THIS STATE.**

*Section 710-37 G. C. does not apply to national banks, but such banks must meet and comply with the requirements of section 710-150 G. C. if they transact a trust business in this state.*

COLUMBUS, OHIO, September 21, 1921.

*Department of Commerce, Division of Banks, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date relative to the application of the state bank act to national banks, was duly received.

As I understand it, the question you desire answered is whether or not national banks located and transacting a trust business in Ohio cities having a population in excess of ten thousand must, in addition to complying with section 710-150 G. C., also meet the requirement of section 710-37 G. C. that corporations transacting a trust business in combination with a commercial or savings bank must have a capital of not less than \$100,000 in addition to the capital required by the same section for commercial or savings bank purposes.

Section 710-37 G. C. reads as follows:

“The capital of a commercial or savings bank or a combination of both shall be not less than twenty-five thousand dollars; provided that in cities the population of which exceeds ten thousand such capital shall be not less than fifty thousand dollars.

The capital of a corporation transacting a trust business shall be not less than one hundred thousand dollars and if such business is combined with that of a commercial or savings bank, or a combination

of both, such capital shall be in addition to the capital required for such commercial or savings bank, or a combination of both, as provided herein."

Section 11, paragraph k, of the Federal Reserve Bank Act (6 Fed. Stats. Annot. pp. 817, 829; Sec. 9794k U. S. Compiled Statutes) provides that the Federal Reserve Board shall be authorized:

"To grant by special permit to national banks applying therefor, when not in contravention of state or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said board may prescribe."

In *People vs. Brady*, 271 Ill., 100, the court held that the provision of the federal act just quoted was unconstitutional, for the reason that the power thereby conferred upon national banks was not reasonably necessary to the efficiency of such banks as agencies of the government, and concerned matters of private property rights which are subject to regulation by the states and not to the control of congress. And also in *Attorney-General vs. Bank*, 192 Mich. 640, it was held that the power provided for had no necessary connection with the business of lending money and accepting deposits by national banks, and that the attempted legislation invaded the sovereignty of the states in which the control of the devolution of property and the conduct of private business within the state is placed.

The Michigan case reached the supreme court of the United States (*Bank vs. Attorney-General*, 244 U. S. 416), and was reversed, the court holding that congress did not exceed its power in enacting the provision in question. In referring to the scope and effect of the provision involved the court, among other things, said that:

"The statute authorizes the exertion of the particular function to national banks when not in contravention of the state law, that is, where the right to perform them is expressly given by the state law, or what is equivalent to deducible from the state law because that law has given the function to state banks or corporations whose business in a greater or less degree rivals that of national banks, thus engendering from the state law itself an implication of authority in congress to do as to a national bank that which the state law has done as to other corporations," etc.

We have no state law prohibiting banks from conducting a trust business in this state, such as was involved in *Appeal of Woodbury*, 78 N. H. 50, and hence, generally speaking, the granting of special permits to national banks located in Ohio to engage in such business here could not be said to be authorizing the banks to act in contravention of our laws. On the contrary, section 710-2 of our law contains an express recognition of the right of national banks having special permits from the Federal Reserve Board to conduct a trust business here, or, at least impliedly consents thereto, by the provision thereof that "the trust department of any bank organized and existing under the laws of the United States shall be subject to inspection, examination and regulation as provided by law." See also proviso in section 710-17 G. C. par. (a).

By reason of the specific references to national banks, or to the trust

departments of such banks, in sections 710-2, 710-11, 710-17, 710-31, 710-127 and 710-128 G. C., and the several regulatory provisions of the Ohio act which could not be applied to national banks because of their being peculiarly under federal control, it would seem that it was not intended to subject such banks to all of the provisions of the Ohio act, but only in the instances and to the extent specifically provided for, or where the language employed is of such character and is used in such connection as to clearly show that it was intended to be all embracing and to reach national as well as state banks, such, for instance, as section 710-150 G. C. presently to be referred to. If such was not the legislative intent, why make special reference to national banks or to their trust departments in the sections grouped above, since the general language thereof, if considered alone, would be broad enough to include them?

While section 710-37 G. C. and other sections of the state bank act may not apply to national banks, it is the opinion of this department that, since the exercise of trust powers by national banks must not, under the federal law above quoted, be in contravention of state law, such banks as desire to exercise trust powers here, must meet the capital and other requirements of section 710-150 G. C., which reads as follows:

“No trust company, or corporation, either foreign or domestic, doing a trust business shall accept trust which may be vested in, transferred or committed to it by a person, firm, association, corporation, court or other authority, of property within this state, until its paid in capital is at least one hundred thousand dollars, and until such corporation has deposited with the treasurer of state in cash the sum of one hundred thousand dollars, except that the full amount of such deposit by such corporation may be in bonds of the United States, or of this state or any municipality or county therein, or of any other state or any municipality or county therein, or in the first mortgage bonds of any railroad corporation that for five years last past has earned at least five per cent net on its issue and outstanding capital stock, which securities and the sufficiency thereof shall be approved by the superintendent of banks. From time to time said treasurer shall, with the approval of the superintendent of banks, permit withdrawals of such securities or cash, or part thereof, upon deposit with him and approval of the superintendent of banks, of cash or other securities of the kind heretofore named, so as to maintain the value of such deposits as herein provided, and so long as it continues solvent he shall permit it to collect the interest on its securities so deposited.”

While the section just quoted does not in terms specifically refer to national banks, yet the language used in the introductory part, viz., “no trust company, or corporation, either foreign or domestic,” is broad enough to include them. See *Appeal of Woodbury*, supra, holding that the provision of the New Hampshire bank act that “No trust company, loan and trust company, loan and banking company, bank or banking company, or similar corporation,” shall be appointed administrator, etc., includes national as well as state banks, although the other sections of the act had reference to state banking institutions only. In this connection the court said:

“The fact that the principal part of the act necessarily excludes them (national banks) from its operation does not conclusively show they were not included in section 34, the terms of which, when thus

applied, present no inconsistency. It is apparent that that section was intended to have a broader application than most of the preceding sections, and to relate to national as well as state banks."

You are therefore advised that section 710-37 G. C. does not apply to national banks, but that such banks must meet and comply with all the requirements of section 710-150 G. C. if they transact a trust business in this state.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2432.

COUNTY BOARD OF EDUCATION—TRANSFER OF TERRITORY—SECTION 4696 G. C. (109 O. L. 65) PASSED UPON.

1. *Under the provisions of section 4696 G. C., for a county board of education to accept a transfer of territory from an exempted village school district, such transfer must be petitioned for by a majority of the electors residing in the territory to be transferred, and a resolution of the board of education of the exempted village district concerned, offering to yield such territory, is not sufficient basis for the county board of education's acceptance.*

2. *Under the provisions of section 4696 G. C., in order to make it obligatory for the county board of education to accept a transfer of school territory from an exempted village school district or a city school district, or another county school district, the petition presented from the school territory to be transferred must contain the signatures of seventy-five per cent of the electors residing in such school territory.*

COLUMBUS, OHIO, September 21, 1921.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, as Director of Education, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

"Your attention is called to the following language in section 4696:

'A county board of education may accept a transfer of territory from any such school district (exempted village, city or county school district) and annex same to a contiguous school district of the county school district.'

"1. For a county board of education to accept a transfer of territory from an exempted village school district, as set forth in the above mentioned section, must such transfer be petitioned for by a majority of the electors residing in the territory to be transferred or is a resolution of the board of education of the exempted village district concerned offering to yield such territory sufficient basis for the county board of education's acceptance?

"2. If a petition of the electors residing in such territory is necessary, does the petition require the signatures of seventy-five per cent of the electors in order to make it obligatory for the county board of education to accept such transfer?"

Section 4696 G. C., as amended in 109 O. L., p. 65, reads as follows: