

4095.

CLOSED BANK POSSESSED WITH TRUST POWERS—SUBSTITUTION OF SECURITIES WITH TREASURER OF STATE WHERE MARKET VALUE OF SAME HAS DECREASED.

SYLLABUS:

1. *The Superintendent of Banks, as liquidating officer of the bank or trust company closed by virtue of the provisions of Sections 710-89 et seq. of the General Code, is not required by the provisions of Sections 710-150, General Code, to substitute for securities deposited with the Treasurer of State which have decreased in market value, other securities of like kind.*

2. *The Superintendent of Banks, as liquidating officer of a closed bank or trust company, may substitute securities of the type mentioned in Section 710-150, of the General Code, for securities deposited under such section with the Treasurer of State which are about to mature, to be held by the Treasurer of State on like terms and conditions.*

COLUMBUS, OHIO, February 26, 1932.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion which reads:

“Section 710-150 of the General Code of Ohio provides as a prerequisite to the transacting of business by a trust company in the state that said trust company deposit with the Treasurer of State cash in the amount of \$100,000, or in lieu thereof, certain classes of securities. This department has always interpreted this section as requiring trust companies depositing said securities in lieu of cash, to keep and maintain with the Treasurer of State such securities of a market value of \$100,000.

Since the suspension of business by various banks possessed of trust powers, the question has arisen relative to my duty to keep and maintain securities on deposit with the Treasurer of State of market value of \$100,000. In other words, in the event that such securities fall or have fallen in value less than this amount, am I authorized to substitute other securities as enumerated in said section, or cash, to bring the required deposit up to \$100,000? Also an inquiry has been made where such securities mature, may I recall the same from the State Treasury and substitute other securities, or cash, sufficient to maintain said \$100,000 deposit?”

Section 710-150 of the General Code, referred to in your request, reads:

“No trust company, or corporation, either foreign or domestic, doing a trust business *shall accept* trusts 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, or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; farm loan bonds, issued under the provisions of the act of congress known as the Federal Farm Loan Act, approved July 17, 1916 and amendments thereto; bonds of this state or any municipality or county therein, 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 issued 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." (Italics, the writer's.)

From the language of the statute it is apparent that the legislative intent was to require a cash deposit of \$100,000, subject to the exceptions stated in such statute, before any trust could be accepted.

There is a universal rule of construction of exceptions contained in a statute which is clearly stated in the first paragraph of the syllabus in the case of *State ex rel. vs. Forney*, 108 O. S., 463:

"Exceptions to the operation of laws, whether statutory or constitutional, should receive strict, but reasonable construction."

The specific provision of the statute is that in cash the sum of \$100,000 must be deposited; the exception is that the full amount of such deposit may be of certain bonds of the type mentioned in such section, "which securities and the sufficiency thereof, shall be approved by the superintendent of banks."

Your first inquiry is whether you, as Superintendent of Banks, having taken over the affairs of a bank and trust company, by virtue of the provisions of Sections 710-89 et seq., of the General Code, have the authority to substitute other securities in lieu of securities already deposited which have decreased in market value. An opinion as to this inquiry involves the construction of two statutes, the first, the question of your powers and duties under Section 710-150, supra, and the other, the same question, as limited by the provisions of Section 710-95 of the General Code, which, in so far as material to your inquiry, reads as follows:

"Upon taking possession of the property and business of such bank, the superintendent of banks is authorized to collect money due to such bank, and to do such other acts as are necessary to preserve its assets and business, and shall proceed to liquidate the affairs thereof, as herein-after provided. * * *"

From the language of the above section, "and to do such other acts as are necessary to preserve its assets and business" it is apparent that the Superin-

tendent of Banks, as liquidating officer, would not exceed his powers if he were to make the substitution referred to in your inquiry. But under the language of Section 710-150, *supra*, is he compelled so to do? You will note that the language of the statute is:

“No trust company * * doing a trust business *shall accept* trusts * * until such corporation has deposited * *”

Giving such language the ordinary interpretation, it would appear that there is no requirement as to substitution until the trust company desires to accept a trust as distinguished from the performance of a trust, the duties of which have already been accepted by the trust company.

The question arises as to whether the legislature used the word “accept” in its ordinary sense or in a technical sense, for there is a well established rule of statutory construction that the words of a statute are to be taken in their ordinary meaning unless they are technical words, in which case they are to be given their technical meaning. An examination of the textbooks discloses that the word “accept” is used in its ordinary sense, that is, with the same meaning as it is used in the law of contracts, and that the trustee must accept or agree to become trustee under some agreement and to perform the duties incident thereto.

In Perry on Trusts and Trustees, Section 259, I find the following language:

“In voluntary or express trusts, no title vests in the proposed trustee, by whatever instrument it is attempted to be transferred, unless he expressly or by implication accepts the office, or in some way assumes its duties and liabilities.”

In Lewis, Law of Trusts (12th ed., p. 224) I find the following language:

“A trustee may accept the office either by signing the trust deed, or by an express declaration of his assent, or by proceeding to act in the execution of the duties of the trust.”

I find nothing within the banking law or other statutes requiring a different construction. I therefore must conclude that since the legislature used an ordinary word in the enactment of Section 710-150, *supra*, it intended the ordinary meaning to be given to such language. See *Smith vs. Buck*, 119 O. S., 101, 105, 2 Sutherland Statutory Construction, Section 389.

If this be the correct interpretation of such section the language of the statute would not require a trust company to substitute new securities in lieu of other securities which have decreased in market value as a condition precedent to performing its duties as trustee under trusts already accepted, but would prevent the acceptance of new trusts until there was on deposit with the treasurer of state \$100,000, or its equivalent of securities of the type mentioned in Section 710-150, General Code, which securities have been approved as to their sufficiency by the Superintendent of Banks.

Specifically answering your first inquiry, I am of the opinion that the Superintendent of Banks, as liquidating officer of a closed bank or trust company, is not *required* to substitute securities on deposit with the treasurer of state which have shrunk in market value.

Your second inquiry likewise involves an interpretation of the same sections. It is to be borne in mind that the duty of the Superintendent of Banks is primarily to liquidate a bank, the assets of which he has taken over by authority of Section 710-89 et seq. of the General Code, and secondarily, the preservation of the assets.

The language in Section 710-150, General Code, applicable to your inquiry, is:

“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 an 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 * * *”

There is nothing in this language which in and of itself would limit the right of substitution of securities which a bank or its representative may desire to withdraw; other provisions of this section place the duty on the Superintendent of Banks to approve the sufficiency of the securities being substituted. The first two sentences of Section 710-95, General Code, are as follows:

“Upon taking possession of the property and business of such bank, the superintendent of banks is authorized to collect money due to such bank, and to do such other acts as are necessary to preserve its assets and business, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The superintendent of banks shall collect all debts due and claims belonging to it, and upon the order of the common pleas court in and for the county in which the office of such bank was located, may sell or compound all bad or doubtful debts, and on like order may sell the real estate and personal property of such bank, on such terms as the court shall direct. * * *”

This section contemplates that the Superintendent of Banks, upon taking possession of the assets of a bank will liquidate or convert into money sufficient of the assets of such company to pay the debts of such company and if necessary for such purpose “may * * enforce the individual liability of the stockholders.” The substitution of other collateral of the kind mentioned in Section 710-150, General Code, upon the terms and conditions therein mentioned, would be prejudicial to no one until there was a default in the performance of the duties under the trust and I am of the opinion that it was not the intent of the legislature to prevent such substitution.

Specifically answering your inquiries, I am of the opinion that:

1. The Superintendent of Banks, as liquidating officer of a bank or trust company closed by virtue of the provisions of Section 710-89 et seq. of the General Code, is not required by the provisions of Section 710-150, General Code, to substitute for securities deposited with the Treasurer of State which have decreased in market value, other securities of like kind.
2. The Superintendent of Banks, as liquidating officer of a closed bank or trust company, may substitute securities of the type mentioned in Section 710-150, of the General Code, for securities deposited under such section with

the Treasurer of State which are about to mature, to be held by the Treasurer of State on like terms and conditions.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4096

PUBLIC DANCE—PERMIT OF PROBATE JUDGE MAY DESIGNATE
TIME OF DANCE—PERMIT MAY NOT BE ASSIGNED.

SYLLABUS:

1. *A permit to hold a public dance issued by a probate judge, may, by its terms allow the giving of more than one public dance.*
2. *A permit for a public dance, issued by a probate judge under the authority of Section 13393, General Code, may be for such period of time as the probate judge may therein designate.*
3. *A permit for the giving of a public dance, issued by a probate judge, only authorizes the giving of such dance by the person to whom such permit is issued.*

COLUMBUS, OHIO, February 26, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your request for opinion with which you enclose a letter from one of your examiners, submitting three questions. These questions read as follows:

“1. When a person has procured a permit to give a public dance, is such permit sufficient for giving future public dances or must such person procure a permit for each public dance given?

“2. In case it is found that one permit is sufficient for giving several dances, for what period of time would a permit be in effect?

“3. Where the owner of a dance hall secured a permit to give a public dance or dances, may a person leasing such dance hall give a public dance without first obtaining a permit from the probate judge?”

Section 13393, General Code, reads as follows:

“No person shall give a public dance, roller skating or like entertainment in a city, village or township without having previously obtained a permit from the mayor of such city or village if such public dance, roller skating or like entertainment is given within the limits of a municipal corporation, or from the probate judge if such public dance, roller skating or like entertainment is given outside a city or village, or permit another to do so. All permits issued under the authority of this section