

OPINION NO. 73-068

Syllabus:

A federal reserve bank located in this state may act as trustee of securities deposited by a trust company, pursuant to R.C. 1109.04, even though it transfers such securities to one of its branches which is located outside the state.

To: Gertrude W. Donahey, Treas. of State, Columbus, Ohio
By: William J. Brown, Attorney General, July 11, 1973

I have before me your request for my opinion, which reads as follows:

Enclosed is a copy of a letter from the Federal Reserve Bank requesting transfer of securities to their Pittsburgh branch.

I am requesting your opinion as to whether this is permissible under Ohio Revised Code Section 1109.04. This section refers to the Federal Reserve Bank or branch located in the state and since this request is for an out-of-state branch, clarification is necessary.

R.C. 1109.03 requires any trust company, foreign or domestic, doing business in this state, to have a paid-in capital of at least \$100,000, and to deposit with the Treasurer of State \$100,000 in cash or designated securities. The trust company is permitted to collect the interest on such securities. R.C. 1109.04 permits the company to deposit the securities with a trustee instead of with the Treasurer of State, and specifies the qualifications for such trustee. R.C. 1109.04 reads as follows:

A domestic or foreign trust company may, by written notice to the treasurer of state, designate a qualified trustee and deposit the securities required by section 1109.03 of the Revised Code with the designated trustee for safekeeping for the account of the treasurer of state, the trust company, and any other persons having an interest in such securities under sections 1109.01 to 1109.27, inclusive, of the Revised Code, as their respective interests may appear and be asserted by written notice to or demand upon the trustee or by order or judgment of a court. In such case, the written receipt of the designated trustee, describing such securities and showing approval of them by the superintendent of banks, shall be accepted by the treasurer of state in lieu of the deposit of such described securities, and the treasurer of state shall issue to the trust company his written acknowledgement to that effect, keeping a copy of such acknowledgement in his office. Thereupon the securities described in such trustee's receipt shall be deemed deposited with the treasurer of state for all the purposes of such

sections. Any federal reserve bank or branch located in this state may act as trustee for the safekeeping of securities under this section without compliance with sections 1109.03, 1109.17, and 1109.18 of the Revised Code, and without becoming subject to section 1109.15 of the Revised Code or any other law of this state relative to the exercise by corporations of trust powers generally. * * *

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It is apparent from this language that Federal reserve banks are favored trustees. They may act as such without depositing securities pursuant to R.C. 1109.03, filing the statement and paying the fee required of foreign trust companies by R.C. 1109.17 and R.C. 1109.18, or becoming subject to examination by the superintendent of banks, pursuant to R.C. 1109.15. The reason for this favored position is, of course, that federal reserve banks need no such cautious regulation as is applied to private financial institutions, being an agency of the Federal government.

Hence, R.C. 1109.04 must be given a liberal construction with respect to federal reserve banks, if there is any ambiguity in its wording. The plain terms of the Section, however, provide the answer to your question. They state that "[a]ny federal reserve bank or branch located in this state may act as trustee * * *." I am informed that the Federal Reserve Bank of Cleveland has two branches, one in Cincinnati and the other in Pittsburgh. The securities in question are deposited with, and remain under the control of, the Federal Reserve Bank of Cleveland, which intends to transfer them to its Pittsburgh branch for administrative reasons. Therefore, it remains trustee. There is literal compliance with the terms of the statute, which refer to "any federal reserve bank or branch located in this state." Clearly, the federal reserve bank in question is located in this state. There is no reason to stretch the meaning of the disjunctive term "or" to make it conjunctive, and require that both the bank and any of its branches which it may choose to utilize be located in this state. In fact, for the reasons stated previously, construction of this statute with respect to federal reserve banks should be liberal, not strict. Accordingly, the answer to your question must be affirmative.

In specific answer to your question, it is my opinion and you are so advised that a federal reserve bank located in this state may act as trustee of securities deposited by a trust company, pursuant to R.C. 1109.04, even though it transfers such securities to one of its branches which is located outside the state.