assessed, nine-tenths of the number of whom may live beyond the confines of his county who did not vote for him as county treasurer because they could not.

I am constrained to the opinion that he is a tax collector for the conservancy district, that his official title as county treasurer of itself neither adds to nor takes from his title as tax collector for the conservancy district and that he is entitled to retain for his own use one per centum of all delinquent taxes collected by him for such conservancy district.

I am not unmindful of the decisions of the courts of Ohio and the opinion of other attorneys general to the effect that, generally speaking, treasurer's fees should be paid into the county treasury, but these decisions and opinion were based upon the theory that the collections made for the conservancy district were but an added duty to an existing office, with which theory I do not agree.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1057.

STATE OF OHIO—POLICE POWER TO REGULATE HOURS OF LABOR OF FEMALES AND MINORS—NATIONAL AND STATE BANKS, ETC.—APPLIES, WHEN.

SYLLABUS:

1. *The State of Ohio has, in the exercise of its police power, the right to regulate the hours of labor per day and week of females and minors employed in National banks and State chartered banks members of or affiliated with federal financial agencies, such as the Federal Reserve System and the Federal Deposit Insurance Corporation, in cases where said banks are situated within the territorial limits of Ohio, in the absence of Federal regulation along the same line.*

2. *The provisions of Sections* 1008 *to* 1008-11, *inclusive, and Section* 12993 *of the General Code, enacted at the last regular session of the General Assembly, having to do with the regulation of the hours of employment of females and minors, applies to females and minors employed in National banking associations; state chartered banks members of the Federal Reserve System; state chartered banks non-members of the Federal Reserve System but insured by the Federal Deposit Insurance Corporation; and state chartered banks non-members of the Federal*

Reserve System and not insured by the Federal Deposit Insurance Corporation.

COLUMBUS, OHIO, August 24, 1937.

HON. S. H. SQUIRES, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

> "At the last regular session of the General Assembly Sections 1008 to 1008-11, inclusive, and Section 12996 of the General Code were enacted and become effective on August 19, 1937. The sections referred to place limitations upon the hours per week and per day that females and minors may be employed.
>
> The nature of clerical work in banks being highly specialized and the volume thereof being subject to peak loads from time to time which cannot be anticipated and which varies with customers' demands, statements, reports of conditions required of every bank, bank examinations and requirements of the National Banking Act, Federal Reserve Act, the Federal Deposit Insurance Corporation, and state law, renders it impossible to maintain a permanent force of sufficient size to meet the requirements of occasional peak loads in the banking business.
>
> Due to the above mentioned federal control and supervision in one form or another, which exists with reference to practically all banks operating in the state of Ohio, your opinion is requested as to whether the above sections apply to the following classes of banks, specifically, situated in and operating in the State of Ohio, to-wit:
>
> 1. National banking associations.
> 2. State chartered banks members of the Federal Reserve System.
> 3. State chartered banks non-members of the Federal Reserve System but insured by the Federal Deposit Insurance Corporation.
> 4. State chartered banks non-members of the Federal Reserve System and not insured by the Federal Deposit Insurance Corporation."

The section of the Code, among the several referred to in your letter, with which we are most concerned is Section 1008-2, which reads as follows:

"Except as hereinafter provided, no employer shall employ a female for more than forty-eight hours in any one week or eight hours in any one day, or on more than six days in any period of seven consecutive days; * * *

Nothing in this section or any other provisions of this act shall apply to the employment of females in agricultural field occupations or in domestic service in private homes or to the employment of females by a telephone company during periods of emergency caused by fire, flood, epidemic, or other public disaster or to the work of females over twenty-one years of age earning at least thirty-five dollars a week in bona fide executive positions, where real supervision and managerial authority are exercized with duties and discretion entirely different from that of regular salaried employes or to the employment of women in the professions of medicine, law, teaching and social work or to the employment of females over 21 years of age in mercantile establishments and telephone companies except in cities of 5000 population and over; or to the work of professional employes in hospitals, such as graduate and student nurses, anesthetists, technicians, graduate and student dietitians and internes.

Section 1008-3, General Code, reads in part as follows:

"(b) 'Employer' includes every person, firm, corporation, partnership, stock association agent, manager, representatives or foreman, or other person having control or custody of any employment, place of employment or of any employe.

(c) 'Day' includes any period of twenty-four consecutive hours."

Section 1008-4, General Code, provides for the posting of a copy of the Act in question and a schedule "which shall contain the maximum number of hours each female shall be employed during each day of the week, with the total hours per week, the time of commencing and stopping work, and the time of commencing and stopping the meal periods." Subsection (b) of said Section 1008-4, General Code, reads as follows, to-wit:

"The presence of any female employe at the place of employment at any other hours than those stated in the schedule applying to her shall constitute prima facie evidence of viola-

tions of this act unless it is proved that her presence there is for some purpose other than employment."

Sections 1008-5 and 1008-10, inclusive, General Code, have to do with inspection and prosecution for violations of the Act.

Section 1008-11, General Code, provides as follows, to-wit:

"If any provision of this act, or the application of such provision to any person or circumstance shall be held invalid, the remainder of this act, or the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby."

The amended part of Section 12996, General Code, reads as follows, to-wit:

"No boy under the age of eighteen years and no girl under the age of twenty-one years shall be employed permitted or suffered to work in, about or in connection with any establishment or occupation named in Section 12993 (1) for more than six days in any one week, (2) nor more than forty-eight hours in any one week, (3) nor more than eight hours in any one day, (4) or before the hour of six o'clock in the morning or after the hour of ten o'clock in the evening; except that in mercantile establishments boys between the ages of 16 and 18 and girls between the ages of 16 and 21 may be employed for ten hours on Saturdays and also on the days specified in Section 1008-2 of the General Code on which females may be employed ten hours in mercantile establishments. No boys under the age of sixteen and no girls under the age of eighteen shall be employed, permitted or suffered to work in, about or in connection with any establishment or occupation named in Section 12993 before the hour of seven o'clock in the morning or after the hour of six o'clock in the evening. The presence of such child in any establishment during working hours shall be prima facie evidence of its employment therein. In estimating such periods the time spent at different employments or under different employers shall be considered as a whole and not separately."

You mention four classes of banks situated and operating within the State of Ohio, to-wit:

1. National banks.

2. State chartered banks which are members of the Federal Reserve Banks (which will hereafter be referred to as "member banks" for the purposes of convenience).

3. State chartered banks which are non-members of the Federal Reserve System but are insured by the Federal Deposit Insurance Corporation (which will hereafter be referred to for the purpose of convenience as "insured banks").

4. State chartered banks non-members of the Federal Reserve System and not insured by the Federal Deposit Insurance Corporation.

Sections 1008, et seq., General Code, contain no exemption as to their application to employees or banks, state or national. Whatever may be said as to the necessity for and the propriety of an exemption from the provisions of this act applicable to bank employees, these are matters which are solely within the prerogative of the General Assembly. In the determination of the questions which you submit, I am confined to a consideration of legislative power and not a consideration of legislative policy.

Considering first the applicability of the statutes here under consideration to National banks doing business in Ohio, it is well established that such banks are instrumentalities of the Federal Government. *McCulloch* vs. *Maryland,* 4 Wheat., 316.

It was held in the case of *U. S. Boulevard Co.* vs. *National Bank,* 22 O. App., 487, 7th branch of the syllabus, as follows:

> "National banks derive authority from federal law, and *no state law is valid which is in contravention therewith.*" (Italics the writer's.)

The foregoing case immediately suggests the question of whether or not there is any Federal law in contravention with the statutes here under consideration. As to this, it is observed that Congress has not as yet invaded the field of regulation of the hours of employment of employees of such instrumentalities of the Federal government.

The statutes in question were enacted in the exercise of the police power of the state for the protection of the health and welfare of its citizens. I held in Opinion 1012, rendered August 13th of this year, as set forth in the second branch of the syllabus:

> "The State of Ohio has ample authority in the exercise of its police power to regulate dining cars within its territorial

limits in the absence of Federal regulation along the same line, notwithstanding the fact that such dining cars are being used in interstate transportation. Such a regulation would not contravene the commerce, due process and equal protection of the law clauses of the Federal Constitution."

The foregoing opinion referred to and cited the case of *New York, New Haven and Hartford Railroad Company* vs. *New York,* 165 U. S., 628, the headnote of which reads as follows:

"The statutes of New York regulating the heating of steam passenger cars, and directing guards and guard-posts to be placed on railroad bridges and trestles and the approaches thereto (Laws of 1887, c. 616, Laws of 1888, c. 189), were passed in the exercise of powers resting in the State in the absence of action by Congress, and, when applied to interstate commerce, do not violate the Constitution of the United States."

In the course of the opinion the court said:

"It is contended that the above statute of New York is repugnant to Section 8 of Article I of the Constitution of the United States providing that Congress shall have power to regulate commerce among the several states, and to make all laws necessary and proper to carry such power into execution, and also to the Fourteenth Amendment of the Constitution of the United States, declaring that no state shall deprive any one of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

According to the numerous decisions of this court (some of which are cited in the margin) sustaining the validity of state regulations enacted under the police powers of the State, and which incidentally affected commerce among the States and with foreign nations, it was clearly competent for the State of New York, in the absence of national legislation covering the subject, to forbid under penalties the heating of passenger cars in that State, by stoves or furnaces kept inside the cars or suspended therefrom, although such cars may be employed in interstate commerce. While the laws of the States must yield to acts of Congress passed in execution of the power conferred upon it by the Constitution, *Gibbons* vs. *Ogden,* 9 Wheat. 1, 211, the mere grant to Congress of the power to regulate commerce with foreign nations and among the States did not, of itself

and without legislation by Congress, impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives and the safety of their people."

* * * * *

"So far as it may affect interstate commerce, it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits. Until displaced by such national legislation as Congress may rightfully establish under its power to regulate commerce with foreign nations and among the several States, the validity of the statute, so far as the commerce clause of the Constitution of the United States is concerned, cannot be questioned."

Particularly pertinent to a determination of the question here under consideration is the case of *Davis* vs. *Elmira Savings Bank,* 161 U. S., 275, in which the court said:

"National banks are instrumentalities of the Federal Government, created for a public purpose and as such necessarily subject to the paramount authority of the United States. It follows that an attempt *by a state to define their duties or control the conduct of their affairs,* is absolutely void *whenever such attempted exercise of authority expressly conflicts with the laws of the United States and either frustrates the purpose of the national legislation or impairs the efficiency of those agencies of the Federal Government to discharge the duties for the performance of which they were erected.* These principles are axiomatic and are sanctioned by the repeated adjudications of this court." (Italics the writer's.)

In *First National Bank* vs. *Missouri,* 263, U. S., 540, 68 L. Ed., 486, the second headnote is as follows:

"A national bank is subject to the laws of the state in which it is located in respect to its affairs unless such laws interfere with the purpose of its creation tend to impair or destroy its efficiency as a Federal agency, or conflict with the paramount laws of the United States."

See also 7 Am. Jurisprudence, pp. 33, 34, as to the extent to which state regulations have been held applicable to National banks.

It has been already pointed out that there are no Federal laws relating to the subject at hand and there can accordingly be no express conflict with Federal laws in applying the statutes here under consideration to National banks; neither may it be contended, in my judgment, that this Ohio law frustrates the purpose of the National legislation under which such banks function. As to the matter of impairment of the efficiency of National banks to discharge the duties for the performance of which they were created, I have no evidence as to any such material impairment by the application of these statutes to National banks as would, in my opinion, justify a court in holding that they have no application to such institutions. It is observed that whatever inconvenience may be occasioned by an application of these statutes to National banks, it is uniform in its effect upon all banks in this state, whether National or State.

The recent decision of the Supreme Court of the United States in the case of *Baltimore National Bank* vs. *State Tax Commission of Maryland,* 297 *U. S.,* 209, 215, 80 *Law Ed.,* 586, is worthy of note. The first paragraph of the headnote is as follows:

> "National bank shares owned by the Reconstruction Finance Corporation may be taxed by a state."

It is interesting in connection with the foregoing case to note that, at the time of its creation and continuously thereafter, the United States has been and still is the sole owner of all the shares of stock of such corporation. It would seem that the exercise of its police power by the State of Ohio, as contemplated in the within case, is certainly laying no greater burden on a Federal agency than an assessment of a tax on National bank stock owned by the Reconstruction Finance Corporation.

In view of the foregoing, it is my opinion that the provisions of Sections 1008 to 1008-11, both inclusive, and Section 12996, General Code, are applicable to females and minors employed by National banks doing business in this state. *A fortiori,* such sections are likewise applicable to state banks members of the Federal Reserve System, state banks non-members of the Federal Reserve System which are insured by the Federal Deposit Insurance Corporation, and state banks which are non-members of the Federal Reserve System and not insured by the Federal Deposit Insurance Corporation.

Respectfully,
HERBERT S. DUFFY,
Attorney General.