

of course, that section 9662 would not justify the purchase of such notes by a building and loan association.

The question as thus assumed may be put as follows:

Is an interest-bearing obligation secured by a deposit of other interest-bearing obligations, which in turn are secured by real estate mortgages and "interest-bearing obligations secured by real estate mortgages", within the meaning of section 9662 of the General Code?

In the opinion of this department, a negative answer must be given to this question. Section 9662 is very explicit. The security for the interest-bearing obligation must be the real estate mortgage. This security must be direct and, in addition, must "in all respects comply with, and be within the rules adopted for making mortgage loans by the corporation making such investments." It is impossible to say that the collateral trust notes in question comply with these requirements; they are not directly secured by real estate mortgage; in case of any default in the payment of the principal or interest of any such collateral trust note, there could be no immediate recourse to the land, and this of itself, in the opinion of this department, is sufficient to take the case out of the application of section 9662. In addition, however, it cannot be said that the real estate mortgages, by which it might be argued the collateral trust notes are indirectly secured, would comply with and be within the rules adopted for making mortgage loans by the building and loan association; or, putting it in another way, there is no way to ascertain whether this is so or not as the real estate mortgages underlying the collateral trust notes are subject to change from time to time.

For all these reasons, you are advised that, in the opinion of this department, a building and loan association in this state is not authorized to purchase collateral trust notes of this character.

Respectfully,

JOHN G. PRICE,

Attorney-General.

2485.

DEPARTMENT OF COMMERCE—HOW "DIVISION OF SECURITIES"
CREATED.

The manner in which that part of the business of the department of commerce formerly conducted by the commissioner of securities should be administered, and the creation of a new division to be known as the "Division of Securities," etc., considered.

COLUMBUS, OHIO, October 18, 1921.

HON. W. H. PHIPPS, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date inquiring whether or not, in the event the director of commerce, with the approval of the governor, should create a new division in the department of commerce under the designation of "Division of Securities", the person appointed to take charge of the division under the title or designation of "Chief of Division", should act in his own name as such chief, or in the name of the director of commerce, was duly received.

The office of commissioner of securities created by former section 744-14 G. C. was abolished by section 154-26 G. C., and all the powers and duties of the office were by section 154-39 G. C. transferred to and vested in the department of commerce created by section 154-3 G. C. Section 154-24 G. C. also provides that the powers and duties heretofore vested in or exercised by any officer, and transferred either in whole or in part to a department created by the administrative code, shall be vested in and exercised by the department to which the same are transferred, and not otherwise.

The powers and duties of the commissioner of securities having been transferred to the department of commerce, they must, according to section 154-24 G. C., supra, be exercised by that department, and the department of commerce, according to section 154-3 G. C. which created it, must be administered by the director of commerce. The latter section further provides that "the director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department."

While the administrative code does not create a "Division of Securities", it is however provided in section 154-8 G. C. that the director of each department, with the approval of the governor, may create new divisions in his department.

It appears, therefore, that until such time as the director of commerce, with the approval of the governor, shall have created a "Division of Securities" in his department, that part of the business of the department formerly conducted by the commissioner of securities should be administered in the name of the department of commerce by the director of commerce.

If a new "Division of Securities" is created in the department under and pursuant to the authority contained in section 154-8 G. C., and a person is appointed to take charge thereof under the title or designation of "Chief of Division", it would, in my opinion, not be improper nor an unwarranted delegation of authority for the director of commerce, acting under the authority conferred upon him by section 154-8 G. C. to "prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employes, the performance of its business", to prescribe as one of the regulations that, subject to the authority and control of the director of commerce, the business of the office be conducted under the name of "Department of Commerce, Division of Securities, by _____, Chief of Division." In the absence of such a regulation, the proper course would be for the business of the new division to be conducted in the name of the "Department of Commerce, Division of Securities, by W. H. Phipps, Director of Commerce."

Your attention is respectfully directed to the provision of section 154-18 G. C., that "Each department shall provide for the keeping, within such department, of such records and journals as may be necessary to exhibit its official actions and proceedings." In the event a new "Division of Securities" is created in, and regulations prescribed for the government of, your department, such action should appear of record on the records and journals required to be kept by the section just referred to.

Respectfully,

JOHN G. PRICE,
Attorney-General.