

of justice. The section is broad enough, in my opinion, to cover the expenses here under consideration.

I am, accordingly, of the opinion that the expenses of a deputy sheriff incurred by him as the agent of the governor in the extradition of a defendant charged with a misdemeanor can only be paid by order of the prosecuting attorney from the fund authorized by Section 3004, General Code, unless the misdemeanor charged is one of those enumerated in Section 1665, General Code, in which case the county commissioners are required by Section 1665-1 of the General Code to pay such expenses from the general fund of the county.

Respectfully,
GILBERT BETTMAN,
Attorney General.

184.

CORPORATION—RECEIVING DEPOSITS TO USE AS CAPITAL AND ISSUING NOTES TO EVIDENCE INDEBTEDNESS—ENGAGED IN BANKING BUSINESS.

SYLLABUS:

A corporation which solicits and receives deposits of money and, as evidence of its indebtedness to depositors, issues interest-bearing promissory notes payable at a fixed time and uses the proceeds of such deposits as working capital in its business is engaged in a banking business.

COLUMBUS, OHIO, March 12, 1929.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“The ————— Mortgage Company, a corporation, was organized under the laws of this state some years ago for the following purposes, to-wit:

‘Of acquiring, owning, holding and disposing of bonds, notes, bills of exchange, mortgages, bills of lading, warehouse receipts, and other securities, as owner, agent, factor or broker; of acquiring, owning, holding and selling real and personal property necessary or convenient to carry out the purpose aforesaid; and the doing of all things necessary or incident thereto.’

Since its organization the company has been actively engaged in the business of loaning money and buying and selling mortgages on property located in its home county.

The attention of the Division of Banks has recently been called on several occasions to advertising matter of this company inserted in daily newspapers and in pamphlet form, copies of which advertisement I am herewith enclosing you.

Funds obtained by this method are used by the company as working capital in its business. Receipt of all moneys placed with the company, as outlined in the copies of advertisements, which I am enclosing, is evidenced by a promissory note executed by the company and delivered to the party placing his funds with it. A blank note such as is given the customer is also herewith enclosed.

I am advised there are other corporations organized for a like purpose which are engaged in a business the same as outlined above.

I would appreciate an opinion from your department as to whether or not the receiving and accepting money as herein stated is to be considered as the conducting of a banking business as defined in Section 710-2 of the General Code of Ohio."

The advertisement which you enclose in your request reads as follows:

"SAVE WITH SAFETY AT 6% INTEREST

Money placed with us is invested in first mortgages on real estate—recognized as one of the safest forms of investment. And we pay 6% interest. You can withdraw any time and get your accrued interest.
 THE _____X_____ MORTGAGE CO.
 _____X_____ Bldg. _____X_____, Ohio."

The promissory note executed by the company and delivered to the party placing his funds with the company is in form as follows:

"No. A _____X_____ _____X_____, Ohio, _____X_____ \$ _____X_____ after date
 THE _____X_____ MORTGAGE COMPANY
 of _____X_____ Ohio,
 Promises to pay to the order of _____the sum
 _____Dollars

VALUE RECEIVED

With interest thereon at the rate of _____per cent. per annum payable semi-annually on the _____ day of _____, and _____ and the payment of interest on this note by check shall constitute a valid discharge of same and no endorsement of such payment on back hereof is necessary. Both principal and interest are payable at the office of the company, _____X_____, Ohio.

 THE _____X_____ MORTGAGE COMPANY.
 By _____Vice-Pres.
 and _____its Secretary."

An examination of the opinions of the Attorney General's office reveals that practically the same question was presented to this office in 1925 and an opinion rendered thereon and published in the Opinions of the Attorney General, 1925, page 358, which opinion contains the following:

"Section 710-2, General Code of Ohio, provides as follows:

"The term "bank" shall include any person, firm, association, or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business whether such deposit is made subject to check or is evidenced by a certificate of deposit, a pass-book, a note, a receipt, or other writ-

ing, and unless the context otherwise required as used in this act includes commercial banks, savings banks, trust companies and unincorporated banks, provided that nothing herein shall apply to or include money left with an agent pending investment in real estate or securities for or on account of his principal; nor to building and loan associations or title guarantee and trust companies incorporated under the laws of this state. All banks, including the trust department of any bank, organized and existing under laws of the United States, shall be subject to inspection, examination and regulation as provided by law.'

This section defines the term 'bank' and the exceptions to the rule. It also provides that all banks shall be subject to examination and regulation.

Your question will naturally turn upon the point as to whether such a corporation is soliciting, receiving, or accepting money or its equivalent on deposit as a business.

In the case of *The Security and Bond Deposit Company vs. The State, et al., Seney*, 105 O. S., page 113, the corporation was soliciting and accepting the deposit of liberty bonds with such corporation and was paying thereon interest in addition to the interests accruing upon bonds and was using the money derived from the pledges from said bonds to carry on the business of making loans to customers. A suit was brought in quo warranto to oust the company from doing business on the ground that such corporation had offended against the laws of the state, misused its corporate authority, franchise and privileges, and assumed franchises and privileges not granted to it, in the particulars that it had unlawfully been carrying on a general banking business and had unlawfully solicited, received and accepted money or its equivalent on deposit, as a business, and had issued therefor its certificate of deposit, pass book, note, receipt or other writing, and had unlawfully assumed and exercised powers granted to banking corporations.

The court held:

'The company incorporated under the laws of this state for the purpose of "contracting for and buying and selling securities and bonds, also borrowing and loaning on same; and making loans on real estate securities," is not authorized to engage in a banking business and where such company solicits and receives government bonds, on deposit at its established place of business in this state, agreeing to return same or like bonds upon call, or at a time agreed upon, paying therefore a stipulated rate of interest in addition to that called for by the coupons attached thereto, its announced purpose being to use same as collateral to borrow money which shall constitute its working capital, such transactions are beyond its authority and will be enjoined.'

On page 121 of the opinion, Matthias, judge, says:

'The relation of the defendant and its depositor is that of debtor and creditor rather than bailor and bailee, being substantially the relation of a bank and its depositor. * * *

At least to the extent of soliciting and receiving such deposits the defendant is engaging in the banking business, and in that respect is acting without authority.'

In the situation presented in your communication, the mortgage company is soliciting the deposit of money or its equivalent to be used by it in the carrying on of its business and issuing to the depositor a certificate of indebtedness payable at a certain stipulated time, and this would seem to bring the mortgage company within the rule laid down in *Security Company vs. The State, supra*. The relation between the mortgage company and the de-

positor is that of debtor and creditor and substantially the relation of bank and its depositor.

It is, therefore, my opinion that the corporation as set out in your communication to the extent of soliciting and receiving such deposits and issuing such certificates of indebtedness is engaging in a banking business."

It is my opinion that this opinion covers the situation as stated in your communication. I see no reason for disagreeing with the holding of my predecessor, and I therefore reaffirm the views therein expressed and, answering your specific question, it is my opinion that the corporation described in your communication, to the extent of soliciting and receiving such deposits and issuing such certificates of indebtedness, is engaging in a banking business.

Respectfully,
GILBERT BETTMAN,
Attorney General.

185.

APPROVAL, ABSTRACT OF TITLE TO LAND OF JOHN H. VADEN IN
NILE TOWNSHIP, SCIOTO COUNTY.

COLUMBUS, OHIO, March 12, 1929.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication, submitting for my examination and approval corrected abstract of title, corrected deed, Encumbrance Estimate No. 4774, and Controlling Board certificate, relating to the proposed purchase of the southeast, northwest and southwest quarters of Ohio State University Lot No. 115 in Nile Township, Scioto County, Ohio, now owned by one John H. Vaden, and which lands are more particularly described in Opinion No. 112, directed to you under date of February 21, 1929.

In the abstract as originally submitted, some uncertainty appeared as to whether the whole of the taxes for the year 1928 had been paid or only the taxes for the first half of said year. By the corrected abstract now submitted, it appears that all of the taxes for the year 1928 have been paid. I am, therefore, of the opinion that said John H. Vaden now has a good and merchantable fee simple title to said lands, free and clear of all encumbrances whatsoever.

In the former opinion of this department above referred to, the warranty deed tendered by said John H. Vaden to the State of Ohio was disapproved for the reason that Ohio State University Lot No. 115, which includes the lands here in question, was not correctly described. The errors in the description of said lot pointed out in said former opinion have been corrected, and said deed is hereby approved.

Encumbrance Estimate No. 4774 and the Controlling Board certificate were referred to and approved in my former opinion. I am herewith returning said corrected abstract of title, corrected deed, Encumbrance Estimate and Controlling Board certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.