

difference between the proportion resulting from this determination (which can be made readily from the forms filed at the time of the initial qualification) and the proportion of the authorized capital stock determined as of the date of the increase, will be the basis of the amount of fee to be charged for such increase.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

922.

TRUST COMPANIES—STATUTORY PROVISIONS AND LIMITATIONS  
RELATIVE TO INVESTMENT DISCUSSED.

SYLLABUS:

*Statutory provisions and limitations relative to investment by trust companies discussed.*

COLUMBUS, OHIO, August 26, 1927.

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

DEAR SIR:—I have an inquiry from Joel S. McKee, National Bank Examiner, which I desire as a matter of courtesy to answer. I am therefore directing opinion to you as if the request had come from you, and a copy thereof will be mailed to Mr. McKee. This inquiry is as follows:

"I would be pleased to have you give me your opinion as to the legality for investment of trust funds in Ohio of bonds of the following classes:

1. A first mortgage real estate bond on an apartment house or hotel in Chicago or New York. The total mortgage is a 60% loan or less.
2. A bond such as the above which is a part of an issue which exceeds 60% of the appraised value of the property.
3. A collateral trust bond of an Eastern Company which is secured by first mortgages on improved property which comply with the 60% law limit but which are on property outside of Ohio or a contiguous state. This bond is secured by 100% of such collateral mortgages.
4. A collateral trust bond of the above nature secured by the same percentage of mortgages, but the collateral mortgages are made for more than 60% of the appraised value of the property."

The sections of law relating to your inquiry are so far as pertinent as follows:

Section 710-166. "A trust company may invest in or loan its trust funds upon the securities, bonds and other interest-bearing obligations enumerated in Sections 111, 112 and 140 of this act, but subject to all limitations as to the amount of the investment or loan therein or thereon as provided by law, and in stocks and bonds of corporations when authorized by the affirmative vote of the board of directors, or of the executive committee of such trust company."

Section 710-111. "(A bank may invest its capital, surplus, undivided profits and deposits in the following securities) :

\* \* \* \* \*

(i) Mortgage bonds, collateral trust bonds, debenture bonds or notes of any regularly incorporated company which, or the constituent companies comprising which for four years (4) prior to the date of purchase has earned over and above all fixed charges other than interest on indebtedness, an amount equal to at least double the interest charges which it will be required to pay upon its outstanding obligations; or mortgage bonds, collateral trust bonds, debenture bonds or notes of any regularly incorporated company, which bonds or notes plus all prior incumbrances are outstanding in an amount not in excess of 50% of the actual value of the property securing said bonds or notes.

\* \* \* \* \*

(k) Bonds or notes secured by first mortgage on improved real estate as defined in Section 113 hereof of not more than 60% of the value thereof.

\* \* \* \* \*

Section 710-112. "Loans by banks upon mortgage notes shall be made upon first mortgage upon real estate situated in this state, or in states contiguous thereto, and shall not exceed forty per cent (40%) of the value of such real estate if unimproved, and sixty per cent (60%) of such value if improved, and the improvements shall be kept adequately insured. In the case of commercial banks, not more than fifty per cent (50%) and in the case of savings banks and trust companies, not more than sixty per cent (60%) of the amount of the paid in capital, surplus and deposits of such bank or trust company at any time shall be invested in such real estate securities. Loans on collateral enumerated in clauses (i), (j) and (k) of Section 111 (G. C. 710-111) of this act, shall not exceed eighty per cent of the value of such collateral."

Section 710-113. "The term 'improved' real estate as used in this act (G. C. 710-1 to 710-189) shall be held to mean land upon which buildings have been erected suitable and intended to be used for residence, business or other purposes and fit for use and occupancy, or under construction for such purposes; and in the case of farm property shall mean tillable land with farm buildings thereon and actually under use for farm purposes, and when so used the same may include pasture and wood lands."

Section 710-140. "A savings bank may invest its funds in :

(a) The securities mentioned in Section 111 (G. C. 710-111) of this act subject to the limitations and restrictions therein contained; except that investments in real estate securities shall be subject to the restrictions contained in Section 112 of this act.

\* \* \* \* \*

An examination of these sections leaves me much in doubt as to just what limitation the legislature intended to place upon the investment of trust companies in mortgage bonds. You will observe in the first instance that Section 710-166 requires any investment in bonds of corporations to be authorized by an affirmative vote of either the board of directors or the executive committee of the trust company. I am assuming that such authority was had in each instance in the cases which you present: Paragraph (i) of Section 710-111 apparently authorizes investments in mortgage bonds where the corporation issuing the bonds had for four years prior to the date of purchase earned over and above all fixed charges, other than interest on indebtedness,

an amount equal to at least double the interest charges which it will be required to pay on its outstanding obligations. In other words, if the required earnings have been made, then investment in this class of securities is legal, irrespective of the amount of security back of the mortgage. The mortgage might be a first or second mortgage, and the securities might be issued up to 100% or more of the value of the property.

The second portion of that paragraph apparently authorizes investment in mortgage bonds irrespective of earning capacity provided that bonds and all other prior encumbrances outstanding are in an amount not in excess of 50% of the actual value of the property securing the bonds. I take this to mean that where there is no history of earning, there must be at least 200% security back of the issue.

Paragraph (k) of Section 710-111 of the General Code refers to bonds and notes secured by first mortgage on improved real estate. It is evident, therefore, that this section must be taken to be in a sense an exception to the provisions of paragraph (i) so as to allow investments in first mortgage bonds on improved real estate up to sixty per cent of the value thereof. It is quite apparent that these bonds or notes are proper investments where the loans are 60% or less, whereas other bonds secured by first mortgages on unimproved property or second mortgage bonds, collateral trust bonds, debenture bonds or notes must have back of them and all prior encumbrances at least 200% security.

Coming to Section 710-112, you will observe that loans upon mortgage notes are limited to first mortgages upon real estate situated in this state or states contiguous thereto and that such loans shall not exceed 40% of the value of such real estate, if unimproved, and 60% of such value, if improved. A serious question is presented whether this territorial limitation is applicable to the mortgage bonds described in paragraphs (i) and (k). I think it significant that the legislature did not use the word "bonds" at all in this section but referred specifically to loans upon mortgage notes. I feel, therefore, that this territorial limitation applies only in cases where notes are given direct to the investing bank or trust company and a mortgage taken as security. The purpose of the legislature was evidently to place a territorial limitation upon direct loans but not to apply the restriction to bonds in the ordinary sense. In other words, loans upon real estate are classified differently from mortgage bonds in which investment is to be made. I have, therefore, reached the conclusion that the territorial limitation in Section 710-112 of the Code is only applicable to direct loans and does not affect the right of investment in mortgage bonds granted by paragraphs (i) and (k) of Section 710-111 of the General Code.

I am not unmindful of the provision of paragraph (a) of Section 710-140 heretofore quoted. The exception as to "investment in real estate securities" making such investments subject to the restrictions in Section 710-112 of this act is not at all clear. If the term "real estate securities" is used in its broad sense, then apparently anything which may be properly described as a mortgage bond would be subject to the restriction contained in Section 710-112 and the mortgage must be upon real estate located in this state or in states contiguous thereto.

I am of the opinion, however, that the intention of the legislature was to restrict investments of the funds of savings banks to all of the authorized investments of commercial banks subject to exactly the same restrictions as are imposed upon those investments, and in addition thereto, to authorize further investments by the further provision of Section 710-140 which I have not quoted.

Viewed in this light, the provisions of Section 710-140 neither add to nor detract from the force and effect of what I have said heretofore with reference to Sections 710-111 and 710-112.

I think it fairly clear that Section 710-166, therefore, authorizes the investment of trust funds in any of the securities or bonds in which a commercial bank may invest

its capital, surplus, undivided profits and deposits. Consequently, your questions may be answered by a study of Sections 710-111 and 710-112 alone.

You first call my attention to an investment in first mortgage real estate bonds on an apartment house or hotel in Chicago or New York, the total mortgage being a 60 per cent loan or less. I assume from this statement that it would be impossible for the company issuing the mortgage to qualify it under the first part of paragraph (i). That is to say, I assume that there can be no showing of earnings for a four-year period. This being so, it is my opinion that these bonds must be qualified as an investment under the second portion of that paragraph, and by the terms of paragraph (k) the loan for which the mortgage is given in security must not be in excess of 60 per cent of the value of the property.

This also answers your second inquiry, since there you state that the issue exceeds 60% of the appraised value of the property. Such an issue could not in any event be a legitimate investment for a trust company in Ohio, since unless there is a history of earnings in compliance with the first portion of paragraph (i), the loan must not exceed 60% of the value of the property.

Your third question deals with collateral trust bonds of a company secured by first mortgages on improved property which comply with the 60% law limit but are on property outside of Ohio or a contiguous state, the bonds being secured by 100% of such collateral mortgages.

I believe that the fact that these mortgages are upon property outside of Ohio has no bearing. If the company shows earnings for four years in compliance with the first portion of paragraph (i), then the bonds would constitute a legal investment irrespective of the character or amount of the collateral back of them. If, on the other hand, the company does not have a record of past earnings sufficient to justify an investment in the bonds under the first portion of paragraph (i), then the amount of the bonds issued must not be in excess of 50% of the actual value of the property securing the bonds. In this instance the property securing the bonds constitutes certain first mortgages on real estate located outside of Ohio or contiguous states. The value of these mortgages would have to be ascertained in order to determine whether or not the amount of the loan exceeds 50% of such value. The fact that this collateral is first mortgages does not bring the issue within the authority conferred by paragraph (k), since the mortgages are only collateral.

The answer to your third inquiry also answers your fourth. Here again it would be a question of whether or not the company could qualify on an earning basis under the first part of paragraph (i), and, if not, then in order to determine the legality of the investment it would be necessary to ascertain the value of the mortgages and apply the 50% limitation.

I trust that I have made myself clear to the effect that the limitation of Section 710-112 applies only where the trust company is making a direct loan and taking back a mortgage to itself. In such an event the investing company must make its own appraisal, and if payment is not made at maturity of the obligation it must assume the duty of foreclosing and the expense necessary to such procedure. On the other hand, in the case of an ordinary bond issue by a corporation secured by a first mortgage, a trustee is designated to act on behalf of the bondholders, and the investing public usually has the benefit of independent appraisements as well as the advantage of having the trustee act in its behalf on foreclosure. This latter kind of bonds is usually negotiable and readily marketable. In this distinction lies the reason for applying the territorial limitation to direct loans secured by mortgage, while at the same time investments in ordinary mortgage bonds are not similarly restricted.

Finally, I call your attention to the last sentence in Section 710-112, which for convenience, I repeat:

"Loans on collateral enumerated in clauses (i), (j) and (k) of Section 111 (G. C. 710-111) of this act, shall not exceed eighty per cent of the value of such collateral."

The use of the word "collateral" here may lead to some confusion, but I think the meaning fairly plain. Where personal loans are made to customers by banks upon the securities named in clauses (i), (j) and (k) of Section 710-111 as collateral, the loan cannot exceed 80% of the value of the collateral put up by the customer. The collateral may include mortgage bonds, etc., or bonds or notes secured by mortgage as defined in paragraph (k). The use of the word "collateral" here is not to be confused with the collateral referred to in paragraph (i) of Section 710-111 when it speaks of collateral trust bonds. In other words, the last sentence of Section 710-112 does not in any way affect the right of investment set forth in Section 710-111 of the General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

923.

COUNTY COMMISSIONERS—HAVE NO AUTHORITY TO ESTABLISH  
IN THEIR COUNTY BUREAU FOR CRIMINAL IDENTIFICATION—  
SHERIFF MAY ESTABLISH SUCH A BUREAU IN CONNECTION  
WITH THE STATE BUREAU.

*SYLLABUS:*

1. *The county commissioners have no authority to establish a bureau for criminal identification within their county.*
2. *The sheriff may, under the authority of 1841-21, establish such a bureau in connection with the state bureau of criminal identification and investigation.*

COLUMBUS, OHIO, August 29, 1927.

HON. G. C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

"I wrote you a letter on August 1, 1927, concerning the establishment of a Criminal Identification Bureau at Fremont, Sandusky county, Ohio. In my letter of August 1st, I told you that we had a competent finger print man, and that the county commissioners were eager to establish a criminal identification bureau and employ him by the year.

On August 2nd, you made answer to my letter and referred me to Sections 3004, 3004-1, 1841-13 up to 1841-21. I am familiar with all these sections, but none hit the point.

What I want to know is: 'Can the county commissioners establish a criminal identification bureau and appoint a man herein in the city of Fremont, Ohio?'