

1964.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND NOLZE & NORTON, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF A STATE ARMORY AT MANSFIELD, OHIO, AT AN EXPENDITURE OF \$52,170.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, April 12, 1928.

HON. FRANK D. HENDERSON, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by and through Frank D. Henderson, Adjutant General of Ohio, and Director of State Armories and Nolze & Norton of Columbus, Ohio. This contract covers the construction and completion of a State Armory at Mansfield, Ohio, and calls for an expenditure of fifty-two thousand one hundred and seventy and no/100 dollars (\$52,170.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted a certificate from the Controlling Board, signed by the Secretary thereof, that in accordance with Section 12 of House Bill No. 502, 87th General Assembly, said board has properly consented to and approved the expenditure of the moneys appropriated by the 87th General Assembly for the purpose covered by this contract. In addition, you have submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1965.

SAVINGS SOCIETY—UNAUTHORIZED TO ENGAGE IN COMMERCIAL BANKING.

SYLLABUS:

When a savings society organized under an act entitled: "An act to incorporate savings societies", passed April 16, 1867, and the act passed March 19, 1868, entitled: "An act to amend an act entitled: 'An act to incorporate savings societies', passed April 16, 1867", elects by virtue of the provisions of Section 710-145 of the General Code, to continue its business under the provisions of the general banking law of

Ohio, it may thereafter engage in business as a savings bank, subject to the provisions of law applicable thereto, but this authority does not extend to such society the right to engage in commercial banking.

COLUMBUS, OHIO, April 13, 1928.

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

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

“A savings society organized under an act entitled: ‘An act to incorporate savings societies’, passed April 16, 1867, and the act passed March 19, 1868, entitled: ‘An act to amend an act entitled: “An act to incorporate savings societies”, passed April 16, 1867’, has recently forwarded to the Secretary of State a certified copy of a resolution passed by the Trustees of said savings society, by the terms of which said resolution, it desires to take advantage of the provisions of Section 710-145 of the General Code, of Ohio.

Said resolution provides in part as follows:

‘AND BE IT RESOLVED FURTHER that upon the filing of the copy of the within resolution with the Secretary of State that The ----- Savings Society shall thereafter under the authority of this resolution engage in any and all business permitted under authority of the general banking laws of the State of Ohio under the supervision of the Superintendent of Banks of the State of Ohio.’

Before approving the election of this savings society to continue its business under the banking act, I would like to know if by such an election duly recorded with the Secretary of State said savings society may engage in a commercial and savings banking business, and would such action make eligible for it to invest its funds in those classes of investments provided for commercial and savings banks.”

The resolution of the savings society electing to be governed by the general banking laws was evidently adopted, as you state, pursuant to the authority contained in Section 710-145 of the General Code, which is as follows:

“Associations incorporated under the act entitled ‘an act to incorporate savings societies’, passed April 16, 1867, and the act passed March 19, 1868, entitled ‘an act to amend an act entitled, “an act to incorporate savings societies,” passed April 16, 1867,’ may continue their business under such acts, and without prejudice to any rights acquired. Such institutions and other savings and loan institutions organized under the laws of this state, if they so elect may continue their business under this act, by signifying such election, under their seal, to the Secretary of State, and conforming their action thereto. The Secretary of State shall record it, and his certificate be evidence thereof.”

You will observe that this section affords to savings societies incorporated under the acts referred to the right to pursue alternative courses. The first sentence grants authority to such societies to continue in business under the authority and subject to the limitations of the original acts. The second sentence, however, authorizes the election on the part of such an institution to continue its business

under the provisions of the general banking act, such election to be signified by a certificate of such action filed with the Secretary of State.

Your specific question is as to the character of the business which such election authorizes the savings corporation to pursue.

Pertinent to the present consideration is an examination of the provisions of the original act authorizing the incorporation of savings societies with a view to ascertaining the nature of these societies and their aims and purposes. The act of April 16, 1867, was a comprehensive measure giving authority for the formation of this kind of a society and prescribing in detail the methods by which its business should be conducted. The first section of that act gave the right to any number of natural persons, not less than five, to become a body corporate "for establishing a savings society". A certificate similar to that filed by corporations was to be filed with the board of commissioners for savings societies, which, upon examination as to responsibility and fitness of the persons, was required to certify its findings to the Governor who thereafter issued a proclamation authorizing the savings society to commence and carry on business. The management of the society was vested in certain officers and not less than seven trustees. These officers and trustees were to be chosen at annual meetings of the societies, and, by Section 10 of the act, all depositors except minors who had on deposit to their credit the sum of \$50.00 or more were entitled to membership, and entitled to one vote for every \$50.00 and fraction of \$50.00 greater than one-half, provided that no one should be entitled to more than twenty votes. The purpose of the corporation is clearly disclosed in Section 11 of the act, which was as follows:

"Every such society may receive on deposit for the use and benefit of the depositors, all sums of money offered for that purpose, but it shall not hold at the same time more than twenty-five hundred dollars of one depositor, other than a religious or charitable corporation."

Thereafter were found limitations upon the investment of the funds of the society and Section 16 was as follows:

"The income or profits of all deposits after deduction of all reasonable expenses incurred in the management thereof, shall be divided among the depositors or their legal representatives, in just proportion; ordinary dividends shall be made every six months, and extra dividends at times fixed by the by-laws; but no dividend shall be declared until the trustees cause an examination to be made, and find that the amount thereof has actually accrued; and no dividend or interest shall be paid to a depositor unless authorized by a vote of the trustees; principal deposits shall only be withdrawn by the depositor or some person by him or her legally authorized, and thirty days' notice in writing of the intention to withdraw the same shall be given by the depositor to the treasurer."

For the better protection of the society the board of managers was authorized to accumulate a surplus fund of not to exceed 10% of the amount of deposits by the terms of Section 20 which was as follows:

"The board of managers of every such society may, at their discretion, out of the income and profits, accumulate gradually, and hold invested in like securities, as provided in section twelve of this act, a surplus fund not exceeding ten per cent. of the amount of deposits in such society, to the end that in case of a reduction in the market price of the securities of public

stocks held or to be held by such society below the par value thereof, any loss to the depositors by reason of such reduction may be prevented or made good to them by means of said surplus fund."

Thereafter were made various provisions with regard to the dissolution and liquidation of the society which need not be discussed.

From the foregoing it is apparent that a savings society, incorporated by virtue of the provisions of this act, was a kind of cooperative enterprise whereby individuals might pool their savings and, by judicious investment thereof, realize a profit therefrom. From what has been said, it is obvious that such a society had no capital stock. The assets were entirely made up of the invested savings and the increment accruing from such investments. The business was therefore purely a savings business.

The institution to which you refer has apparently continued to be governed by the original act by virtue of which it was incorporated. It may be pointed out that the amendatory act of March 19, 1868, which is referred to in Section 710-145 of the General Code, merely extended the investment powers of a savings society to include securities not theretofore authorized. I may suggest that Section 710-146 of the Code has further extended the right of investment of savings societies doing business under the acts by which they were incorporated. That section is as follows:

"Savings societies organized and doing business under the acts named in the preceding section, in addition to the investments authorized in such acts, may invest their funds in the bonds of a county or municipal corporation issued pursuant to any law of this state, and charge interest on loans of not more than eight per cent per annum payable semi-annually."

As I have already stated, the business of a savings society is purely that of savings. You question whether or not the election of the savings society in this instance permits the society to engage in a commercial and savings banking business, and whether such action authorizes it to invest its funds in the class of investments provided for commercial and savings banks. Undoubtedly the election has some definite effect upon the status of the society, for otherwise the provision therefor would be of no significance. An examination of the sections of the General Code with relation to banking shows a clear intention to distinguish between what is known as commercial banking and the business of conducting a savings bank. While many of the sections refer to banks in general and extend authority to all banks to do and perform certain things, and likewise subject all banks to certain limitations as to investments, reserves, etc., yet many of the sections refer specifically to commercial banks alone, while others are definitely directed toward savings banks only. Thus a group of sections starting with Section 710-139 and continuing through Section 710-146 deals exclusively with savings banks. Sections 710-139 and 710-140, General Code, define the investments which a savings bank is authorized to make. These investments comprehend certain of the securities in which a commercial bank is authorized to invest by virtue of Section 710-111 of the General Code, and extends authority to other securities as well.

Section 710-141 of the General Code, is specific authority for the receipt of deposits and is in the following language:

"A savings bank may receive on deposit any sum of money offered for that purpose by any person, firm, society or corporation, or by any municipal corporation, township, school district, taxing district, county or state, or other body politic, or which is ordered to be deposited by any court of this or any

other state, or of the United States, having custody of money, and make investment or loans thereof in the manner provided herein. It also may credit and pay such rates of interest thereon as may be agreed upon."

While this section is analogous to Section 11 of the act of 1867, *supra*, with respect to savings societies the power to receive deposits is considerably broader.

Section 710-144, General Code, makes the maintenance of a currency reserve in a minimum amount mandatory.

Without discussing more fully all of the sections of the banking code which are applicable, it may be said that a savings bank under the general banking law has broader powers of investment and greater authority to receive deposits than has a savings society acting by virtue of the original act of incorporation for such societies. At the same time, however, the general character of the business is essentially the same.

On the other hand, commercial banks differ essentially in the character of their business from savings banks and savings societies. They are authorized by Section 710-135, General Code, to receive deposits payable on demand and subject to check, or what is commonly known as commercial accounts. By Section 710-136, General Code, they are authorized to loan money as follows:

"Commercial banks may loan money upon personal or collateral security, discount, buy, sell or assign promissory notes, drafts, bills of exchange, trade and bank acceptances, and other evidences of debt and buy and sell exchanges, coin and bullion."

Other powers are extended to commercial banks by the succeeding section which need not be discussed.

The right to have commercial accounts and to lend money on personal or collateral security, and other powers are peculiar to commercial banks and are not available to savings banks. This essential difference is clear from the statutes discussed and likewise from the provisions of Section 710-116 of the Code, which is as follows:

"A corporation formed to combine two or more classes of business under this act, shall keep separate books of accounts for each class. Receipts, investments and transactions relating to each of such classes of business shall be governed by the provisions and restrictions herein specifically provided therefor."

Reverting to your question, therefore, it may be said that while the business of a savings society is analogous to that of a savings bank, it differs essentially from that of a commercial bank. This being so, it is not difficult to construe the language of Section 710-145 of the General Code, when it states that upon the election of savings societies they may "continue their business under this act." Their business being solely a savings business, the conclusion is inescapable that the business which they are authorized to continue subject to the terms of the general banking act is that of a savings bank alone.

You are accordingly advised that when a savings society organized under an act entitled: "An act to incorporate savings societies", passed April 16, 1867, and the act passed March 19, 1868, entitled: "An act to amend an act entitled: 'An act

to incorporate savings societies', passed April 16, 1867" elects, by virtue of the provisions of Section 710-145 of the General Code, to continue its business under the provisions of the general banking law of Ohio, it may thereafter engage in business as a savings bank, subject to the provisions of law applicable thereto, but this authority does not extend to such society the right to engage in commercial banking.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1966.

APPROVAL, BONDS OF LIVERPOOL TOWNSHIP, MEDINA COUNTY,
OHIO—\$5,100.00.

COLUMBUS, OHIO, April 13, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1967.

TAXATION—EXEMPTION OF PROPERTY BELONGING TO MISSIONS
—CHURCH SCHOOLS—ORPHANS' AND OLD PEOPLE'S HOMES.

SYLLABUS:

Property belonging to missions, church extension work, orphans' and old people's homes and church schools used exclusively for charitable purposes is exempt from taxation in Ohio.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads:

"Enclosed you will find a letter our office has received from Reverend R. A. S. In this letter he has asked us a question concerning the taxability of certain annuities here in Ohio.

The question 'Are Annuities to Missions, Church Extension Work, Orphans' and Old People's Homes, and Church Schools taxable in Ohio?' We would like an official opinion from your office covering this question and would indeed be pleased if your office perhaps can give special attention to this matter."