

connection, it might be proper to point out that when making appropriations for deputy and clerk hire in the sheriff's office, the county commissioners would be justified in taking into consideration the facts set forth in your letter.

Therefore, in specific answer to your questions, it is my opinion:

1. County commissioners must allow the sheriff the actual cost of keeping and feeding prisoners, which includes the preparation of meals, at a rate not to exceed seventy-five cents per day for each prisoner.

2. A sheriff is not entitled to additional compensation by virtue of the fact that he is called upon to perform additional work during the summer months.

Respectfully,

JOHN W. BRICKER,
Attorney General.

652.

CLOSED BANK CLAIMS AGAINST EVIDENCED BY PASSBOOK OR OTHER INSTRUMENTS ARE SECURITIES—REGISTRATION NOT REQUIRED—LICENSED DEALERS ONLY MAY SELL—PURCHASER OF SECURITIES FOR OWN ACCOUNT NEED NOT BE LICENSED NOR PURCHASED FROM LICENSED DEALER—CLAIMS PRESENTED AGAINST CLOSED BANK NOT WITHIN JURISDICTION OF DIVISION OF SECURITIES WHEN—OHIO SECURITIES ACT DISCUSSED.

SYLLABUS:

1. *Claims against closed Ohio banks evidenced by passbooks or other instruments are securities within the meaning of the term as used in the Ohio Securities Act.*

2. *Such securities are not required to be registered in accordance with the Ohio Securities Act before being sold and dealt in in Ohio, but may be sold and dealt in only by licensed dealers in securities.*

3. *There is no requirement that a person purchasing securities for his own account by repeated and successive transactions must purchase from a licensed dealer, nor that the purchaser be licensed under the Ohio Securities Act.*

4. *A transaction whereby a person turns in claims against a closed bank in Ohio to be applied to an obligation which such person owes to such bank, is not within the jurisdiction of the Division of Securities.*

COLUMBUS, OHIO, April 21, 1933.

HON. JOHN W. POWERS, *Chief, Division of Securities, Columbus, Ohio.*

DEAR SIR:—This office has received a request for official opinion from the prosecuting attorney of Lucas County upon the following two questions:

"1. Can accounts in closed banks properly be brought under our Securities Law, Section 6373 et seq. and the purchase and sale thereof regulated and controlled as securities?

2. Even though accounts in closed banks are held to be securities within the meaning of these statutes, can the Division of Securities re-

quire an individual purchasing accounts for his own use, to be applied on an obligation which he owes to the closed bank in which the account stands, to deal through a licensed dealer?"

I am advised that these questions arise as a result of the rather prevalent practice of dealing in claims against closed banks.

There are two phases to the first question submitted by the prosecuting attorney: One, whether or not such claims are securities within the meaning of the Ohio Securities Act, codified in 1929 as Sections 8624-1, et seq. of the General Code, and the other, whether or not this act applies to their purchase and sale.

The term "security," as used in the Ohio Securities Act, is defined in paragraph number 2 of Section 8624-2, General Code, as follows:

"The term 'security' shall mean any certificate or instrument which represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property or credit of any person (as that term is defined by subsection (4) of this section (2) or of any public or governmental body, subdivision or agency, and shall include shares of stock, certificates for shares of stock, voting trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates in or under profit sharing or participation agreements, or in or under oil, gas or mining leases, or certificates of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, and the currency of any government other than that of the United States and Canada.

The term 'security' shall, for the purposes of this act, be deemed to include real estate not situated in this state and any interest in real estate not situated in this state."

In view of the foregoing broad definition of the term 'security,' there can be little doubt but that obligations of a bank evidenced by passbooks or other instruments are securities within the meaning of the Ohio Securities Act.

With respect to whether or not the purchase or sale of these securities is regulated or controlled by the Ohio Securities Act, such question must clearly be answered in the affirmative unless they are exempt by the provisions of the act. Section 8624-3, General Code, provides in so far as pertinent as follows:

"The following securities shall be exempt from the provisions of sections 8, 9, 10, 13 and 14 hereof, and the requirements therein set forth need not be complied with.

* * * * *

(2) Any security issued by and representing an interest in or an obligation of a national bank, or a corporation or governmental agency created by or under the laws of the United States or of the Dominion of Canada, or of a bank incorporated or organized under the laws of any state; provided that such bank, corporation or governmental agency

is under the supervision of or subject to regulation by the government or state under whose laws it was incorporated or organized.

* * * * *

The securities in question are issued by and represent an interest in banks within the foregoing exemption and are therefore exempt from the provisions of Sections 8624-8, 8624-9, 8624-10, 8624-13 and 8624-14 of the Ohio Securities Act. These last mentioned sections relate to the registration of securities by description and by qualification. It is obvious therefore that these bank securities may be dealt in and sold without the necessity of registering the same with the Division of Securities. I find, however, no provision to the effect that these securities shall be otherwise outside of the provisions of the Securities Act. It therefore follows that the other provisions of the Securities Act regulating the sale of securities, such, for instance, as those with respect to licensing dealers therein, are applicable to the securities here under consideration.

Question No. 2 submitted by the prosecuting attorney likewise contains two questions: First, must an individual who purchases these securities, purchase the same through a licensed dealer, and second, is an individual required to have a license to deal in securities before being permitted to apply claims against the bank to the payment of an obligation which he owes to the bank?

An examination of the Securities Act discloses no provision to the effect that the purchaser of securities must purchase the same from a licensed dealer, nor must the purchaser be qualified, licensed or registered under the Securities Act. The requirements as to licensing and registration are applicable to persons engaged in selling, rather than in purchasing, securities.

What I have considered as the first portion of question number two must therefore be answered in the negative.

There is serious doubt as whether or not setting off obligations of a closed bank against a debt due to the bank would constitute a sale of securities, notwithstanding the broad definition of the term "sale" contained in Section 8624-2, General Code. It is not, however, necessary to pass upon this question for the reason that even if such a transaction may be said to constitute a sale within the meaning of the term as used in the Securities Act, the transaction is exempt by Section 8624-4, General Code, which section so designates "a sale of securities by a bona fide owner, not the issuer thereof, such sale being made in good faith and not for the purpose of avoiding the provision of this (the securities) act and not being made in the course of repeated and successive transactions of a like or similar character." By virtue of Section 8624-17, General Code, when securities are the subject matter of the so-called exempt transactions set forth in Section 8624-4, no dealers license is necessary.

Summarizing and in specific answer to the foregoing questions, it is my opinion that:

1. Claims against closed Ohio banks evidenced by passbooks or other instruments are securities within the meaning of the term as used in the Ohio Securities Act.

2. Such securities are not required to be registered in accordance with the Ohio Securities Act before being sold and dealt in in Ohio, but may be sold and dealt in only by licensed dealers in securities.

3. There is no requirement that a person purchasing securities for his own account by repeated and successive transactions must purchase from a licensed dealer, nor that the purchaser be licensed under the Ohio Securities Act.

4. A transaction whereby a person turns in claims against a closed bank in Ohio to be applied to an obligation which such person owes to such bank, is not within the jurisdiction of the Division of Securities.

Respectfully,

JOHN W. BRICKER,
Attorney General.

653.

PUBLIC FUNDS—WHEN DEPOSITED IN STATE BANK UNDER LIMITED OPERATION MAY BE WITHDRAWN WHEN SECURED BY COLLATERAL SECURITIES IN EXCESS OF DEPOSIT—EFFECT WHEN MEMBER OF FEDERAL RESERVE SYSTEM.

SYLLABUS:

Under regulation 32 of the Secretary of the Treasury, a State Bank which is a member of the Federal Reserve System, operating in a limited way, whether under the control of a conservator or not, may permit withdrawals of public deposits secured wholly by collateral securities in excess of the amount of the deposit.

COLUMBUS, OHIO, April 21, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I have your letter of recent date which reads as follows:

“The Union Trust Company, Cleveland, Ohio, is a member of the Federal Reserve System and has not as yet been licensed.

Regulation 32 issued by the Secretary of the Treasury of the United States provides:

‘Any State bank which is a member of the Federal Reserve System, and is not licensed by the Secretary of the Treasury to perform usual banking functions, may permit withdrawals of deposits which are lawfully secured by collateral; provided that such withdrawals are (a) permissible under applicable law (b) duly authorized by the Board of Directors of such bank upon such terms with respect to the release of the collateral as will fully protect the depositors and creditors from the creation of any preference and (c) approved by appropriate state authorities having jurisdiction of such bank.’

I have received a letter from R. S. Crawford, Secretary of the Union Trust Company, a copy of which I am enclosing, and I would appreciate your opinion as to whether or not I should approve the payment of public funds in the manner suggested in his letter.”

The letter enclosed with your request reads in part as follows:

“We have received several requests from political subdivisions for the payment of their impounded balances or a part thereof, in accordance with the so-called Regulation 32 issued by the Secretary of the Treasury under the National Banking Emergency Relief Act, and we expect we shall receive many additional requests of this kind.