4108.

EXECUTORS AND ADMINISTRATORS—MAY EXCHANGE PART OF ESTATE REPRESENTED BY SHARES OF STOCK FOR SHARES IN A NEW CORPORATION—CONSENT OF PROBATE COURT NOT REQUIRED.

SYLLABUS:

By virtue of the provisions of Section 10506-44, *of the General Code, an administrator or an executor has the authority, when, in the use of his discretion it is advisable, to participate in the merger or reorganization of a corporation, to exchange shares of stock, which are part of the assets of the estate, for shares of stock in the new corporation, and it is not necessary, although probably advisable, to obtain the consent of the probate court to such transaction, unless it is necessary to invest additional funds from the estate in order to effect such merger.*

COLUMBUS, OHIO, February 27, 1932.

HON. EVERETT F. FOLGER, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following question:

> "I have been asked by the Probate Court of this county for a construction of Section 10506-44 of the Ohio Probate Code providing for the participation in corporate reorganization by administrator or executor.
>
> The question we have before us is:
>
> 'What authority has the administrator or executor to exchange bank stock coming into his hands by virtue of a will of his decedent for like bank stock in another banking institution; that is where there is a merger or some other plan of reorganization being carried into effect, can the administrator or executor of an estate holding bank stock in his possession as such administrator or executor exchange this stock under order of the Probate Court for stock in the other organization with which the bank is being merged or reorganized, and has the Probate Court the authority under this section to permit the administrator or executor to make such exchange?'
>
> If you will give me a construction of this statute I will appreciate it very much as this is an entirely new section and I have no construction of it and this opinion is requested for use by the Probate Court."

Section 10506-44 of the General Code, referred to in your communication, is as follows:

> "Unless the instrument creating the trust forbids, a fiduciary shall have power with respect to securities held by him to do all of the things which an individual holder might do, including the power to exercise or sell subscription rights to accept in place of the stock held, new stock in the same corporation, or in the event of reorganization, sale or merger, in a different corporation, and with the approval of the court to invest

additional funds where required of all shareholders participating in a reorganization."

This section, from its language, applies to all fiduciaries. By reason of the fact that in the Probate Code the legislature has seen fit to define the term "fiduciary" such definition is exclusive as to the meaning of such term. Section 10506-1 of the General Code, in so far as applicable, reads:

> "The term 'fiduciary' as used in this act means any person, association or corporation * * appointed by and accountable to the probate court, and either acting in a fiduciary capacity for any person, association or corporation, or charged with duties in relation to any property, interest, trust or estate for the benefit of another."

At the present time it is evident that this definition includes "executors, administrators and guardians, whether of a minor or of an incompetent and trustees appointed under the terms of a will." Transposing this definition into Section 10506-44, supra, such section would then read:

> "Unless the instrument creating the trust forbids, any person, association or corporation appointed by, and accountable to the probate court, and either acting in a fiduciary capacity for any person, association or corporation, or charged with duties in relation to any property, interest, trust or estate for the benefit of another shall have power with respect to securities held by him to do all of the things which an individual holder might do, including the power to exercise or sell subscription rights, to accept in place of stock held, new stock in the same corporation or in the event of a reorganization sale or merger, in a different corporation, and with the approval of the court to invest additional funds where required of all shareholders participtaing in a reorganization."

It is thus apparent that there is no ambiguity in the language contained in such section, and it would be clearly applicable to either an administrator or an executor. As stated by Judge Robinson, in *Smith* vs. *Buck,* 119 O. S., 103:

> "We are asked to ascertain the intention of the legislature from facts extraneous to the act and extraneous legislation, and then to interpret that which the legislature did enact as meaning that which we find, from such extraneous information and investigation, it intended to enact.
>
> This court, in the case of *Slingluff* vs. *Weaver,* 66 O. S., 621, declared:
>
> 'The intent of the lawmakers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly and clearly and distinctly, the sense of the law-making body, there is no reason to resort to other means of interpretation. The question is not what did the General Assembly intend to enact, but what is the meaning of what it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

Therefore, even though I were of the opinion that the intent of the legisla-

ture was not to authorize either an executor or an administrator to participate in a merger, I would be without authority to render such opinion.

An examination of the language of Section 10506-44, supra, discloses that the only time it is necessary to obtain the approval of the court in such transaction is when it becomes necessary for the shareholders to advance additional funds in order to participate in a reorganization, this being the express language of the legislature.

Specifically answering your question, I am of the opinion that, by virtue of the provisions of Section 10506-44, of the General Code, an administrator or an executor has the authority, when, in the exercise of his discretion it is deemed advisable, to participate in a merger or a reorganization of a corporation to exchange shares of stock which are part of the assets of the estate for shares of stock in the new corporation and that it is not necessary, although probably advisable, to obtain the consent of the Probate Court to such transaction unless it is necessary to invest additional funds from the estate in order to effect such merger.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4109.

SPECIAL ASSESSMENTS—RAILROAD COMPANY IN LIQUIDATION—UNPAID INSTALLMENTS ARE PROVABLE CLAIMS AGAINST RECEIVERSHIP ESTATE.

SYLLABUS:

When a railroad company has elected to pay that portion of a special assessment assessed against it, in installments, and thereafter, before all of such installments have been paid, such corporation is placed in receivership for the purpose of liquidation, such remaining installments are a personal obligation of such corporation, and a provable claim against the receivership estate.

COLUMBUS, OHIO, February 27, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion in answer to the following question:

> "The F. and F. Railway Company, is in the hands of a receiver, and has been allowed by the Public Utilities Commission to discontinue rendering service and sell the assets of the company. Among the claims against the company is that of taxes and assessments. Some years ago some of the streets in Fostoria whereon tracks of the company were located were improved. The company elected to pay the assessments against it in installments, which I believe were for a period of ten years. Some have been paid, some are in arrears, and the balance are not yet due. The receiver claims that the authorities are not entitled to payment of