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BANK LIQUIDATION — WHERE BANK HAD TRUST DEPARTMENT — SUPERINTENDENT OF BANKS MAY NOT DELIVER TO TRUSTEE APPOINTED TO SUCCEED BANK, RECORDS PERTAINING TO TRUST.

SYLLABUS:

The Superintendent of Banks, in charge of the liquidation of a bank having a trust department, may not deliver to a trustee named to succeed such bank the records pertaining to the trust which such successor trustee is administering.

Columbus, Ohio, October 18, 1940.

Honorable Rodney P. Lien, Superintendent of Banks,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Several state banks now in the process of liquidation, had prior thereto qualified to do business of trust companies and since the Superintendent of Banks took possession of their business and property for the purpose of liquidation successor trustees have been appointed to administer the trusts in the trust departments of these banks.

In a number of instances, the successor trustee has requested that the Superintendent of Banks deliver to it all of the records pertaining to the particular trust being administered by it.

Since Section 710-107 of the General Code of Ohio specifically provides for the disposition of all books, papers and records of a bank after it has been finally liquidated by the Superintendent of Banks, I would appreciate your opinion as to whether or not the Superintendent of Banks, in charge of the liquidation of a bank having a trust department, is permitted to comply with the request of a successor trustee to deliver to it all of the records pertaining to the trust which it is administering.”

In order to answer your question, a brief analysis of the rights of a successor trustee and the duties of the Superintendent of Banks will be helpful.

A successor trustee receives all the assets and property belonging to the trust estate; the title to and the right of possession of the corpus of the estate vests in him. However, all of the records of the original trustee are not assets of the trust estate and are not to be transferred to the successor. Therefore, the records of the bank which acted as trustee but is now in liquidation should be retained by the liquidator, even though such records contain certain information concerning the administration of the trust. Such records are not included in the corpus of the trust estate. Ohio has recognized this theory of trusts, which is expressed in 4 Ohio Jurisprudence, p. 191, paragraph 49, as follows:

“The trustee in an express trust will take an estate or interest in the trust *res* sufficient in extent to enable him to carry out the powers and duties imposed upon him in the administration of the trust.”

Furthermore, the Superintendent of Banks came into possession of all the records, ledgers, journals, etc., not by reason of trusteeship, but solely because of the requirements of Section 710-91 of the General Code, which reads as follows:

“Immediately upon the posting of notice on the door or doors of a bank by the superintendent of banks, as provided in section 710-90 of the General Code, the possession of all assets and property of such bank of every kind and nature, wheresoever situated, shall be deemed to be transferred from such bank to, and assumed by the superintendent of banks; and such posting shall of itself and without the execution or delivery of any instruments of conveyance, assignments, transfer, or endorsement, vest the title to all such assets and property in the superintendent of banks. * * * ”

This statute has been construed in the case of National City Bank, Successor Trustee, vs. The Guardian Trust Company, 137 O. S., p. 279, 18 O. O. p. 42:

“There is no authority in our statutes for the superintendent of banks, as liquidator, to assume the office of trustee, or to account for the acts of the insolvent trustee. * * * On the contrary, with respect to the *corpus* of the trusts handled by such institution, the superintendent of banks is merely a custodian, pending the appointment of a successor trustee.”

Although the trust assets (corpus) of the estate are transferred to the successor trustee, the records, ledgers, journals, etc., of the bank pertaining to the trust must remain in possession of the superintendent of banks. These

records are the property of the bank in liquidation, and all title to and right of possession of such papers vest in the superintendent. His custodianship extends merely to the corpus of the estate.

This position is made conclusive by Section 710-107 of the General Code, which reads:

“All books, papers and records of a bank which has been finally liquidated by the superintendent of banks, shall be deposited by the superintendent of banks in the office of the clerk of courts for the county in which the office of such bank was located, such books, papers and records to be held by the clerk of courts of such county subject to the order of the court of common pleas for such county.”

Here is a statutory requirement which orders the Superintendent of Banks to turn over all books, papers and records of the liquidating bank to the clerk of courts of the county in which the office of such bank is located after the liquidation is completed. Obviously, if the Superintendent of Banks were to distribute to a successor trustee all of such books, papers or records which the bank compiled and used in the administration of the trust, he could not comply with the law. There is an absolute duty upon him to deposit such records with the clerk of courts, and the statute authorizes the court to make an order in regard to these records only after they have been deposited with the clerk of courts.

I conclude, therefore, that the Superintendent of Banks may not deliver to a successor trustee all of the records pertaining to a particular trust which had been administered by a bank now in liquidation.

Respectfully,

THOMAS J. HERBERT,
Attorney General.