

Your request, however, infers that the debtor at the present time is able to pay the debt and if the claim were pressed at this time it would be paid in full. It is my opinion that the Superintendent of Banks in charge of the liquidation of a closed bank does not have authority to execute a waiver or to enter into any other agreement which would create a preference in favor of a creditor or a person or corporation indebted to the closed bank, for this might clearly be prejudicial to the claims of other creditors or to the individual liability of the stockholders in the event that it subsequently became necessary to enforce payment of the obligation which was by the act of the Superintendent of Banks made subsequent to other creditors.

In your request you state that the corporation finds it necessary to borrow money for the purpose of paying its taxes and for the season's purchase of materials, and that third parties are willing to loan money to the debtor of the closed bank providing you, as Superintendent of Banks, enter into an agreement extending the maturity of your loan, and consent that no payments shall be made upon the loan to the closed bank other than interest until such new money so advanced shall have been fully repaid, and you ask whether you may enter into such an agreement. If your question were limited merely to the payment of taxes, I do not believe it would be in excess of your powers; however, since you also include funds for operating expenses it is evident that conditions might be such that the corporate debtor would be liquidated by way of the Receiver, or otherwise, and in such event, by virtue of the agreement which you suggest, such claim would be entitled to be paid ahead of the amount due to the bank which you are liquidating. Thus the bank may only receive a partial payment of its indebtedness and therefore such course might reasonably be presumed to be prejudicial to the rights of the creditors and the stockholders of the bank.

I am therefore of the opinion that, when the Superintendent of Banks has taken possession of the property and business of a bank for the purpose of liquidation, he has no authority to enter into an agreement with a debtor of such bank so closed, agreeing to waive the priority of the sum due to the closed bank in favor of a new loan being advanced to the debtor for the purposes of operating expenses.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4139.

APPROVAL, BONDS OF INDEPENDENT RURAL SCHOOL DISTRICT  
NO. 2, OF ISLAND CREEK TOWNSHIP, JEFFERSON COUNTY, OHIO  
—\$1,862.00.

COLUMBUS, OHIO, March 8, 1932.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*