

rogatives which would be in violation of Article II, Section 1 and Article IV, Section 1 of the Constitution of Ohio.

It is therefore my opinion that:

A person on probation, as provided by section 13452-1, General Code, can not be extradited until after the expiration of the probationary period.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3808.

MORTGAGE—MAY BE SECURITY FOR DEPOSITORY ACCOUNT OF CITY OR COUNTY WHERE BALANCE OWING ON SAID MORTGAGE DOES NOT EXCEED 50 PER CENT OF VALUE OF LAND—SECTION 2288-1 GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *When, at the time a mortgage is tendered as security for a depository account, by favor of Section 2288-1, General Code, the balance owing on the said mortgage is more than 50% of the value, at that time, of the real estate covered by the mortgage, it is not of the class of mortgages which the statute provides may be accepted as security for depository accounts, and may not be accepted as security for any amount or for any purpose contemplated by the statute.*

2. *The words "amount loaned" as they appear in Section 2288-1, General Code, should be construed to mean the amount owing on a mortgage at the time it is tendered as security, by favor of the statute.*

COLUMBUS, OHIO, December 3, 1931.

HON. ZELMER G. MORGENTHAUER, *Prosecuting Attorney, Hamilton, Ohio.*

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

"We are respectfully asking your opinion with reference to a construction of the provisions of Section 2288-1 of the General Code of Ohio, relative to the hypothecation of mortgages for the security of funds in depositories.

Question: Suppose a bank holds a 60 per cent mortgage upon property valued today at \$10,000.00, can the bank use this 60 per cent security mortgage on a 50 per cent basis or deposit with the city or county officials this \$6,000.00 mortgage for \$5,000.00 value?"

The pertinent part of Section 2288-1, General Code, reads as follows:

"In addition to the undertakings or security provided for in sections 2732, 4295, 7605 and 7607, it shall be lawful to accept first mortgages, or bonds secured by first mortgages bearing interest not to exceed six per cent. per annum, upon unincumbered real estate located in Ohio, the value of which is at least double the amount loaned

thereon. * * * The value of such real estate, shall be determined by valuation made under oath by two resident freeholders of the county where the real estate is located, who are conversant with real estate values. * * *

In Opinion 3764 rendered under date of November 14, 1931, it was held that the value of the real estate, for the purpose of determining whether or not a mortgage deposited as security by favor of Section 2288-1, General Code, is of the class mentioned in the statute, should be fixed as of the time the mortgage is tendered for the purpose mentioned.

When that value is fixed it then becomes necessary to determine whether or not the value of the real estate is double the amount loaned on the mortgage, and for that purpose it is necessary to know what construction should be placed on the words "amount loaned." The substantial legal question involved in this determination is purely a question of statutory construction.

The fundamental inquiry in all judicial construction of statutes is to ascertain the intention of the Legislature and the objects to be attained by the particular enactment. *City of Mt. Vernon, v. Mochwart*, 75 O.S., 529; *Cochrel v. Robinson et al.*, 113 O.S., 526.

The apparent object to be attained by the enactment of this statute is to permit banks and trust companies to deposit first mortgages of the kind described, or bonds secured by such mortgages, as security for deposits of public funds made by county commissioners, municipal authorities and boards of education.

In granting this permission, the Legislature has provided for safeguarding those deposits by specifying certain standards which must be met by the mortgages in question so that they will be acceptable, by favor of the statute, as security for the deposits mentioned. One of these requirements is that any mortgage tendered as such security must cover property of a value at least twice as much as the amount of the loan which the mortgage secures. The apparent purpose of this requirement is no doubt two-fold. First, it is no doubt intended that the ratio between the amount of the loan secured by the mortgage and the value of the property covered by the mortgage should be such as to afford a fair margin of safety. The Legislature definitely fixed this ratio, by providing that each such mortgage shall be upon real estate, the value of which is at least twice the amount loaned thereon. Second, it is intended that the difference between the value of the property covered by the mortgage and the amount to be secured thereby, should be sufficient to afford a fair chance to liquidate the mortgage without resorting to a foreclosure suit.

Obviously, a mortgage for a small amount on a valuable piece of property may be more easily and quickly realized on by a sale of the mortgage than one where the difference between the value of the property and the amount necessary to satisfy the mortgage would be slight. In the latter case it would generally be necessary to foreclose the mortgage in order to realize on it. It is reasonable to presume, in my opinion, that the Legislature had in mind these matters at the time of enacting this statute, and for that purpose provided that mortgages which would be acceptable as security for depository accounts, by favor of the statute, should be first liens on real estate the value of which was at least twice the amount loaned thereon.

With this object of the statute in mind, together with the rule that the word "value" as used in the statute, means the value at the time the mortgages are ten-

dered as security by favor of the statute, and the rule of construction referred to above, it may well be asserted, in my opinion, that the words "amount loaned" as used in the statute, mean the amount owing on a mortgage at the time it is tendered as security, and that this amount should be not more than one-half the value of the property as of that time.

It has been the general rule in the past, for banks to loan on real estate mortgage security not more than forty percent of the value of the real estate. This rule, however, has not been strictly adhered to, and even where it was, mortgages given on a forty percent valuation oftentimes became fifty or sixty percent mortgages in a falling market, and it is this very condition that prevails at the present time. What the market was at the time the mortgage was given, and what the ratio between the face of the mortgage and the value of the property was at that time is no concern of the depositor who is about to accept such mortgages as security for depository accounts, as it would have no rational bearing on the value of the mortgage as security for the depository account. It is the ratio between the amount covered by a mortgage and the value of the property which secures that amount at the time the mortgage is tendered as security for a depository account, that measures its worth for that purpose.

Usually, loans made by banks which are secured by mortgages on real estate are payable in regular monthly or quarterly payments, and oftentimes, therefore, the face value of such loans at the time they were given is materially reduced in the course of time. If, for instance, a loan of \$5,000 is made payable in monthly installments of \$50.00 per month, which loan is secured by a mortgage on real estate, and payments are regularly made, the amount of the loan after two years would be approximately \$4,000 instead of \$5,000, and so far as the worth of this mortgage is concerned, after it had been reduced to \$4,000 for the purpose contemplated by Section 2288-1, General Code, it would amount to but a \$4,000 value instead of \$5,000, the original amount of the loan.

I am therefore of the opinion that the words "amount loaned" as used in this statute, should be construed to mean the amount owed on a mortgage, or the amount of the loan which a mortgage secures, at the time it is offered as security for depository accounts by favor of this statute, and that this amount must be not more than one-half the value of the property at that time, else the mortgage is not within the class of mortgages described in this statute, and I am of the opinion that if a mortgage does not meet these requirements, it is not of the class mentioned in the statute, and may not be accepted as security for any amount by favor of the statute.

Applying this rule to your specific question, I am of the opinion that if a bank holds a mortgage to secure a loan amounting at this time to \$6,000 on property valued at \$10,000, that mortgage may not be accepted by favor of Section 2288-1, General Code, as security for any amount, as it is not a mortgage such as the statute permits to be deposited as security for depository accounts.

Respectfully,

GILBERT BETTMAN,

Attorney General.