

1382.

APPROVAL, DEED FORM FOR RELINQUISHMENT OF SURPLUS MIAMI
AND ERIE CANAL LANDS BY CITY OF CINCINNATI.

COLUMBUS, OHIO, January 10, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date submitting for my examination and approval a deed form of a deed to be executed by the city of Cincinnati relinquishing to the State of Ohio parcels Nos. 6, 7, 8, 9, 11, and 187-A of surplus Miami and Erie Canal lands.

This deed is one to be executed by the city of Cincinnati under authority of amended Senate Bill No. 123, enacted by the 87th General Assembly under date of April 20, 1927, 112 O. L. 210.

An examination of the deed form submitted shows that the same is in all respects in conformity with the requirements of said act, and that when executed according to the form submitted will be effective to relinquish to the State of Ohio all of the right, title and interest which the city of Cincinnati now has in said parcels of land.

Said deed form is herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1383.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENT IN VAN
WERT COUNTY.

COLUMBUS, OHIO, January 11, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1384.

BANK—INCREASE OF CAPITAL STOCK NOT FULLY PAID IN WITHIN
SIX MONTHS—APPROVAL OF REDUCTION OF CAPITAL STOCK
BY SUPT. OF BANKS, DISCRETIONARY—PROCEDURE IN REDUC-
ING CAPITAL STOCK OUTLINED.

SYLLABUS:

1. *Where a banking corporation has increased its capital stock, and such increase in the capital stock of the corporation has not been fully paid in within six months from the date when such increase was authorized, the Superintendent of Banks may, within his discretion, approve a reduction of the capital stock, providing however, that such approval shall not be given except upon a finding by him that the security of existing creditors of the corporation will not be impaired.*

2. *When the Superintendent of Banks has approved the reduction of capital stock*

of a banking corporation, as provided in Section 710-60 of the General Code, the corporation may reduce such capital stock by an amendment to its articles, as provided in Section 8623-14, and 8623-15 of the General Code of Ohio. Such amendment may only be adopted by the affirmative vote of two-thirds of the holders of the shares of said corporation.

COLUMBUS, OHIO, January 11, 1930.

HON. O. C. GRAY, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads as follows:

“In January, 1929, a bank organized under the laws of Ohio, increased its capital stock from fifty thousand (\$50,000.00) dollars to one hundred thousand (\$100,000.00) dollars by filing, as provided by law, in the office of the Secretary of State, certificate of amendment to its articles of incorporation, setting forth a resolution of the holders of shares of stock entitling them to exercise more than two-thirds of the voting power of the bank, which said resolution reads as follows:

‘That the capital stock of this bank be increased by the issuance of five hundred shares under the following terms and conditions:

(a) Subscription rights to be given to the present stockholders in the ratio of one share of the new stock for every two shares of the present stock, provided that no fractional shares shall be issued, but the board of directors shall endeavor to equalize fractional rights through the use of unexercised subscription rights.

(b) All such stock sold under subscription rights to be sold for the sum of one hundred and forty (\$140.00) dollars per share, forty dollars of which is to be credited to the paid in surplus fund. All remaining shares to be sold for the price of one hundred and fifty (\$150.00) dollars per share, and the sum of fifty dollars per share to be credited to the paid in surplus fund. The disposition of said remaining stock to be controlled by a committee appointed by the board acting with approval of the board. Sales of such remaining stock to be made when new accounts or other considerations are present to such an extent as to justify the issuance of the stock in the opinion of the committee and the board of directors, provided further that none of the additional stock issue authorized by this resolution may be re-sold by any purchaser thereof to any other person without first having been offered to the board of directors of this bank at the price paid for same and as fixed herein.

(c) The board of directors is hereby authorized to adopt such additional conditions relating to the issuance of said five hundred shares including time of issuance, preparation of suitable certificates, and other matters as they may deem desirable.’

The entire amount of such increase as authorized by the amendment to its articles of incorporation has not been paid in as provided in Section 710-59 of the General Code, to wit, within six months from the date such increase was authorized. The present paid in capital of said bank (exclusive of the premium received on sale of same) is now seventy five thousand (\$75,000.00) dollars.

There has been filed with the Division of Banks certified copy of a resolution adopted by the board of directors of said bank on November 6th, 1929, by the terms of which it desires to reduce its capital stock from one hundred thousand (\$100,000.00) dollars to seventy-five thousand (\$75,000.00) dollars.

I would appreciate your opinion as to whether or not it is within my

power to approve this reduction should I be satisfied that the security of the existing creditors of the bank will not thereby be impaired. (Section 710-60).

If in your opinion I should not, under the circumstances, approve this reduction, what procedure should I adopt to require the capital stock of this bank to be fully paid in, and is it incumbent upon me to see that the unsold shares are sold for the amount provided in subdivision (b) of the amendment quoted above?

If in your opinion, I may approve the reduction of the capital stock of this bank under the circumstances herein set forth, may a legal reduction of the capital be made by resolution of the board of directors without the affirmative vote of the holders of two thirds of the shares of stock of the bank?"

Section 710-59, General Code, provides that the capital stock of a bank may be increased in the manner provided by law for all other corporations, and that such increase in the capital stock shall be fully paid in within six months from the date when the increase is authorized.

Section 710-60, General Code, provides that the capital stock of a bank may be reduced in the manner provided by law for other corporations, but that no reduction shall be valid except when the same has been approved by the Superintendent of Banks. Such approval shall not be given except on a finding by the Superintendent of Banks that the security of existing creditors of the corporation will not be impaired.

For the purpose of construing the sections of the General Code, pertinent to your inquiry, let it be assumed that upon examination you will find that the security of existing creditors of the corporation will not be impaired.

Section 710-30, General Code, provides as follows:

"Every bank whose capital stock has not been paid in as required by law, and every bank whose capital shall have become impaired by losses or otherwise, shall within three months after receiving notice from the Superintendent of Banks, cause the deficiency in such capital to be paid in by assessment upon the stockholders pro rata for the amount of capital stock held by each. If any stockholder of such bank neglects or refuses to pay such assessment as herein provided, it shall be the duty of the board of directors to cause a sufficient amount of the capital stock of such stockholder or stockholders to be sold at public auction, upon thirty days' notice given by posting such notice of sale in the office of the bank and by publishing such notice in a newspaper in the place where the bank is located, and if none, then in a newspaper published nearest thereto, to make good the deficiency, and the balance, if any, shall be returned to such delinquent shareholder or shareholders. If any bank shall fail to cause to be paid in such deficiency in its capital stock for three months after receiving such notice from the Superintendent of Banks, the Superintendent of Banks may forthwith take possession of the property and business of such bank until its affairs be finally liquidated as provided by law.

A sale of stock as provided in this section, shall affect an absolute cancellation of the outstanding certificate, or certificates, evidencing the stock so sold, and shall make said certificate null and void, and a new certificate shall be issued by the bank to the purchaser of such stock."

In the case which you outline in your communication, capital stock not having been paid in, as required by the provisions of Section 710-59, General Code, the Superintendent of Banks could, I believe, have ordered an assessment upon the stockholders in an amount sufficient to have caused a deficiency in such capital to have

been paid in. I do not believe, however, that it is a mandatory duty upon the Superintendent of Banks to make such an order, but he may use his discretion. If, therefore, the rights of creditors are affected by the capital not being paid in, the Superintendent of Banks should serve notice on the bank and cause the deficiency in such capital to be paid in by assessment of the stockholders. If, however, the rights of creditors should not be affected, such an order would have an effect of creating an extra burden on the stockholders, and be of no benefit. It might well be concluded that the sections herein referred to were enacted to protect the creditors of a banking corporation. If, therefore, the creditors are not affected by the reduction in capital, in the case to which you refer, I am inclined to the view that you should approve the reduction. Authority for such construction of these sections of the General Code, is found in the case of *Cochrel vs. Robinson*, 113 O. S. 526, the fourth branch of the syllabus reading as follows:

"In the construction of a statute the primary duty of the court is to give effect to the intention of the Legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained."

Section 8623-14, General Code, provides in part, as follows:

"A corporation organized under the provisions of this act or of any previous corporation act of this state may by amendment alter its articles in any respect; provided, that only such provisions shall be included or omitted by amendment as it would be lawful to include in or omit from original articles filed at the time of making such amendment or effect changes of shares as hereinafter provided for.

In particular, without prejudice to the generality of such power of amendment, a corporation may by amendment:

* * *

(e) Increase or reduce the authorized number of shares of any class;

* * * "

The method of procedure which should be followed in the reduction of capital stock as set forth in your communication, is contained in Section 8623-15, General Code, which reads in part, as follows:

"Amendments may be made when authorized by the incorporators, directors or shareholders in the manner and in the cases provided for in this section.

* * *

After subscriptions to shares have been received, any amendment (including any that could be adopted by the board of directors as hereinbefore provided) may be adopted, at a meeting of shareholders entitled to vote thereon, by the affirmative vote of the holders of shares entitling them to exercise two-thirds (or such other proportion, not less than a majority, or vote by classes, as the articles may permit or require) of the voting power of the corporation on such proposal.

* * * "

The articles of incorporation not being before me, I assume that there are no provisions contained in them prescribing the method of reduction of capital stock.

I am of the opinion therefore, that the sections herein set forth are controlling as to the questions now before me, and that such reduction of capital stock, if approved by you, shall only be made after the same has been authorized by a two-thirds affirmative vote of the shareholders of the corporation.

In specific answer to your inquiry, I am of the opinion that :

1. Where a banking corporation has increased its capital stock, and such increase in the capital stock of the corporation has not been fully paid in within six months from the date when such increase was authorized, the Superintendent of Banks may, within his discretion, approve a reduction of the capital stock, providing however, that such approval shall not be given except upon a finding by him that the security of existing creditors of the corporation will not be impaired.

2. When the Superintendent of Banks has approved the reduction of capital stock of a banking corporation, as provided in Section 710-60 of the General Code, the corporation may reduce such capital stock by an amendment to its articles, as provided in Sections 8623-14 and 8623-15 of the General Code of Ohio. Such amendment may only be adopted by the affirmative vote of two-thirds of the holders of the shares of said corporation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1385.

APPROVAL, BONDS OF LAKE COUNTY—\$3,413.96.

COLUMBUS, OHIO, January 11, 1930.

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

1386.

APPROVAL, BONDS OF HANNIBAL RURAL SCHOOL DISTRICT, MONROE COUNTY—\$1,600.00.

COLUMBUS, OHIO, January 11, 1930.

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

1387.

SALARIED VILLAGE MARSHAL—DOLLAR FEE AND MILEAGE FOR SERVING WARRANTS OF ARREST—POWER TO RETAIN SUCH FEES FROM STATE CASES—FEES IN ORDINANCE CASES PAYABLE INTO VILLAGE TREASURY.

SYLLABUS:

1. *A salaried village marshal may retain the dollar fee and mileage, as provided by Section 3347, General Code, for serving warrants of arrest, if the criminal case involved is one resulting from a violation of a statute.*