

879.

APPROVAL, BONDS OF FRANKLIN TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN, COUNTY, \$8402.54, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 8, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

880.

APPROVAL, BONDS OF FRANKFORT VILLAGE SCHOOL DISTRICT, ROSS COUNTY, \$5191.51, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 8, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

881.

SECURITIES—WHEN MORTGAGE BONDS AND NOTES SECURED BY BONA FIDE MORTGAGE OR REAL ESTATE ARE SECURITIES UNDER TERMS OF SECTION 6373-2 G. C.—BROKER MUST SECURE DEALER'S LICENSE IF SALE OF LESS THAN FIFTY PER CENT OF ENTIRE ISSUE IS MADE—PURPOSE OF BROKER IN PURCHASING SUCH BONDS IS IMMATERIAL.

SYLLABUS:

Under the terms of section 6373-2, General Code, mortgage bonds and notes secured by bona fide mortgage on real estate are securities, except in those specific transactions which include more than fifty per cent of the entire issue in a sale to one purchaser, and any sale of any of such bonds or notes which does not include in the sale to one purchaser more than fifty per cent of the entire issue, is a sale of securities within the meaning of that section.

COLUMBUS, OHIO, November 8, 1923.

HON. CYRUS LOCHER, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date as follows:

“There are several investment companies and brokers doing business in Ohio that deal exclusively in real state mortgage bonds. Their method of doing business is as follows: An investment company or a bond broker purchases the entire or the greater part of an issue of notes or bonds secured by a bona fide mortgage on real estate in Ohio for the purpose of resale in Ohio, then proceeds to sell said real estate bonds to the public through agents to whom a commission is paid.

We respectfully request an opinion on the following:

1. Said investment company or broker contends that by virtue of section 6373-2 of the General Code that it is not necessary to secure either an exemption or a certificate of compliance from the Division of Securities. Is this connection right?

2. Said investment company or broker contends that it is not necessary by virtue of section 6373-2 to secure a dealer's license or licenses for the agents, nor to give a bond either for the dealer or the agents. Is the contention right?

3. Does it make any difference whether the broker or the purchaser purchases said real estate bonds for investment, or for resale?”

The blue sky law of Ohio is a general law, and is intended to apply to all securities as the term is used in the popular sense, except such as are specifically exempted by the terms of the act itself. Section 6373-2 defines these exceptions.

Your questions involve an interpretation of the terms of section 6373-2 of the General Code. Keeping in mind the familiar principle of construction that an exception to a general statute shall not be extended in its meaning beyond the plain and explicit terms of such exceptions, we will examine the language of section 6373-2.

Eliminating all that does not specifically and directly apply to the situation which your letter presents, and eliminating the parenthetical clause in paragraph 1, the section reads as follows:

“The term ‘securities’, as used in this act, shall not be deemed to include * * * mortgage bonds and notes secured by bona fide mortgage on real estate.”

If nothing else were contained in the section, the issues of which you speak could not be deemed securities within the meaning of the securities act. Following the words “mortgage bonds and notes” in paragraph 1, however, is a parenthetical clause as follows:

“Other than corporate bonds where more than fifty per cent of the entire issue is not included in a sale to one purchaser.”

Keeping in mind the fact that the parenthetical clause above quoted applies only to corporate bonds and that the conclusion herein reached applies only to such bonds, we see that the evident intent of the legislature was to exempt from the terms of the act the bonds or notes involved in any particular transaction in which more than fifty per cent of the entire issue is disposed of to one purchaser. This does not mean that the mere fact that fifty per cent of the issue is sold to one purchaser at some time, exempts the entire issue and all transactions subsequently involving it from the terms of the securities law. If this purchaser who acquires more than fifty per cent of the issue subsequently resells, and in such sale conveys to a purchaser less than fifty per cent of the entire issue, then as to such transaction such bonds or notes are securities, within the meaning of the securities law.

It will be apparent that if the interpretation contended for by the briefs which were submitted to you, and which you included with your letter, were to be accepted, every issue of such bonds and notes could be entirely removed from the operation of the law by the simple expedient of a formal transfer of fifty-one per cent to an employe or officer of the company, and a subsequent transfer by him to a third party. Our conclusions are, therefore:

(1) That it is necessary for the broker to secure an exemption of certificate of compliance from the Division of Securities if at any time a sale is made to any person of less than fifty per cent of the whole issue.

(2) The investment company or broker must secure a dealer's license and give bond for himself or his agents if any such sale of less than fifty per cent of the entire issue is made.

(3) The purpose of the broker in purchasing such bonds or notes is immaterial; it is not a question of what he purposes to do, but what he does.

Each particular case must be judged according to the principles explained, in the answers to your first and second questions.

Respectfully,

C. C. CRABBE,
Attorney-General.

882.

EXEMPTION OF ASSETS—SECTION 10654 G. C. (SENATE BILL NO. 8-110 O. L. 51) CONSTRUED.

SYLLABUS:

When there is not sufficient money to equal the difference between the value of the personal property selected by the widow or widower, and five hundred dollars in lieu thereof, as provided in amended section 10654, General Code, said difference in money is not a debt against the estate for the payment of which real estate may be sold.

COLUMBUS, OHIO, November 8, 1923.

HON. HARRY G. GRAM, *Probate Judge, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your recent communication in which you state as follows:

“The last legislature passed an act amending section 10654, relative to exempting the assets from administration of certain decedent's estate, under