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**BANKING ACT, OHIO — FEDERAL BANKING ACT — PERSONS, FIRMS OR CORPORATIONS NOT LICENSED TO ENGAGE IN BANKING BUSINESS MAY NOT ENGAGE IN BUSINESS OF SELLING AND ISSUING DRAFTS OR MONEY ORDERS.**

**SYLLABUS:**

Persons, firms or corporations not licensed under the Ohio Banking Act to engage in state banking business, or licensed under the Federal Banking Act, may not engage in the business of selling and issuing drafts or money orders.

Columbus, Ohio, June 2, 1944

Mr. H. E. Cook, Superintendent of Banks  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“Complaints have reached this office that the L. B. H. Pharmacy, C., Ohio, is engaging in the business of transmitting money through the issuance of money orders to persons desiring to avail themselves of this service.

A person desiring to pay a bill, or transmit money for other purposes, deposits with the Pharmacy a sum equal to the amount to be paid or transmitted, whereupon the pharmacy issues a money order in said amount, payable to the party designated. (Photostatic copy enclosed) On each such money order, in an amount up to \$2.50, a charge of 10c is made; to \$5.00, a charge of 12c; to \$10.00 a charge of 15c; to \$20.00 a charge of 17c; and on sums exceeding this amount up to \$100.00, a charge of 26c.

Does this, in your opinion, constitute a violation of Section 710-3 of the General Code, which prohibits persons, firms or corporations, other than banks, from soliciting, accepting or receiving deposits.”

Inasmuch as the Ohio Banking Act, Sections 710-1 to 710-189, General Code, sets up an elaborate system of laws providing for the or-

ganization of banks, general and special, and divides the general banks into commercial banks, savings banks and trust companies and prevents any corporation which has not complied with the provisions of law from engaging in the banking business and prevents a person from engaging in the banking business unless he shall have complied with the provisions of law therein contained with respect to an individual engaging in a banking business, we must examine its provisions to see whether the transaction in question constitutes engaging in the banking business since the company in question is not licensed thereunder. For the purpose of such act, Section 710-2, General Code, defines the term "bank" as follows:

"The term 'bank' shall include any person, firm, association, or corporation soliciting, receiving or accepting money, or its equivalent, on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing, and unless the context otherwise requires as used in this act includes commercial banks, savings banks, trust companies, special plan banks, and unincorporated banks; provided that nothing herein shall apply to or include money left with an agent pending investment in real estate or securities for or on account of his principal; nor to building and loan associations or title guarantee and trust companies incorporated under the laws of this state. \* \* \*"

The term "engaging in the business of banking" has been defined many times by the courts and in the case of *Merchantile National Bank v. City of New York*, 121 U. S. 138, the following definition is contained which is substantially the same, if not the exact definition set forth in the decisions hereinafter cited:

"\* \* \* The business of banking, as defined by law and custom, consists in the issue of notes payable on demand, intended to circulate as money where the banks are banks of issue; in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; *buying and selling bills of exchange*; negotiating loans, and dealing in negotiable securities issued by the government, state and national, and municipal and other corporations. \* \* \*"

(Emphasis mine.)

See also: *State Tax Commission v. Yavapai County Savings Bank*, 81 Pac. (2d) 86, 90; *American Sugar Refining Co. v. Anderson*, 20 Fed. Sup. 55, 56; *Commercial National Bank v. First National Bank*, 97 Tex. 536;

First National Bank v. Dawson County, 66 Mont. 321; First National Bank v. Turner, 154 Ind. 456; Richards v. Incorporated Town of Rock Rapids, 31 Fed. 506, 509; Bressler v. Wayne County, 32 Neb, 834; First National Bank v. Chehalis County, 6 Wash. 64; In re Prudence Co., 10 Fed. Supp. 33, 36; Moag v. State, 218 Ind. 135.

In the case of Ohio Life Insurance and Trust Company v. Merchants Insurance and Trust Company, 30 Tenn. 1, the question was directly presented as to whether or not the business of selling bills of exchange constituted the banking business. In such case it was specifically held that the business of buying and selling bills of exchange was engaging in the banking business. See also: Rosenblum v. Auglim, 43 Fed. Sup. 889.

It is thus to be seen that the definition contained in Section 710-2 of the General Code is not substantially different from the definition of "bank" as defined by the decisions.

Under the Ohio Banking Act the acceptance of deposits of money, however evidenced, is engaging in the banking business. It is to be observed from your inquiry that the pharmacy in question accepts sums of money and issues a draft evidencing such receipt, which draft, upon delivery to the proper person and properly endorsed, in effect accomplishes a withdrawal of the money left with the pharmacy company. Such transaction is quite similar to a deposit payable upon demand or a specific deposit withdrawable upon presentation of the certificate of deposit properly endorsed.

It would further seem, from the facts stated in your request, that the company in question is selling its drafts at a profit or with a view to profit since it receives for each draft issued in a lesser amount than \$2.50, a price of 10c; for each draft of less than \$5.00, 12c; for each draft of a lesser face amount than \$10.0, a charge of 15c; for each draft in the face amount of less than \$20.00, the sum of 17c; and for each draft in excess of \$20.00, but not exceeding \$100.00, it receives a compensation or fee in the amount of 26c.

From the definition of "banking" above quoted from the United States Supreme Court opinion, it would seem that when a person or corporation *engages in the business of* selling bills of exchange it is en-

gaging in the banking business. The decisions in which such definitions are contained do not take the view that if, as an isolated transaction, a person exchanges his draft for an amount of money equal to the face amount of the draft or sells his draft, as an isolated transaction, at a profit, such transaction would constitute "banking". It is only when, by reason of repeated transactions, he engages in the business of selling such drafts that his conduct amounts to the banking business.

In 1 Michie "Banks and Banking", page 6, paragraph 2, we have the following description of a bank:

"A bank is a QUASI public institution, for the custody and loan of money, *the exchange and transmission of the same by means of bills and drafts*, and the issuance of its own promissory notes, payable to bearer, as currency, *or for the exercise of one or more of these functions*, \* \* \*."

(Emphasis mine.)

From an examination of the Ohio Banking Law it would seem that the State of Ohio has undertaken, as have other states, to supervise the conduct of the banking business with a view to protecting the interests of depositors and others in need of banking facilities and with a view to accomplishing such purpose the court has stated in *The Security & Bond Deposit Co. v. The State, ex rel. Seney*, 105 O. S. 113, at page 118, that:

"\* \* \* Pursuant to the policy thus clearly expressed, the general assembly of Ohio passed appropriate legislation providing for the regulation, supervision and inspection of banking institutions of the state for the purpose of protecting and safeguarding the interests of the public. Such act should be so construed as to accomplish the very evident purpose of its enactment. The forceful and purposeful attempts to avoid or evade the effect of its beneficial and salutary provisions should not be encouraged or permitted. \* \* \*"

It would seem that the purpose of the Banking Act is to insure to the general public that those persons, firms or corporations engaging in or holding themselves out as being able and qualified to furnish such services as those coming within the definition of "banking" are financially sound and able to furnish such facilities and that no other persons, firms or corporations, other than those licensed by the state, shall furnish such banking facilities.

In view of the fact that the pharmacy in question is engaging in selling its bills of exchange as a business, it is my opinion that the conduct described in your letter is in violation of the Ohio Banking Laws.

Specifically answering your inquiry, it is my opinion that persons, firms or corporations not licensed under the Ohio Banking Act to engage in state banking business, or licensed under the Federal Banking Act, may not engage in the business of selling and issuing drafts or money orders.

Respectfully,

THOMAS J. HERBERT

Attorney General