

Township, Clermont County, Ohio, leasing and demising to the State for the purposes therein stated tracts of land in said township and county.

The leases here in question, designated with respect to the number of the lease, the owner of the property and the acreage of land covered by the respective leases, are as follows:

Number	Name	Acreage
2250	Charles W. Moyer Estate	22.92
2254	James H. White Estate	407

Both of these leases are for a term of five years and in each instance the property described is leased to the state for the sole purpose of a state game refuge. And, in this connection, it is noted that as to each of these leases the Conservation Council, acting through you as Conservation Commissioner, has made an order setting aside the lands described in the lease for the purpose of a state game and bird refuge, as provided for in section 1435-1, General Code.

Upon examination of these leases, I find that the same have been executed and acknowledged by the respective lessors in the manner provided by law. I also find upon examination of the provisions of these leases and of the conditions and restrictions therein contained, that the same are in conformity with statutory provisions relating to the execution of leases of this kind.

I am accordingly approving these leases as to legality and form, as is evidenced by my approval endorsed upon the leases and upon the duplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3455.

BUILDING AND LOAN ASSOCIATION—POWER OF SUPERINTENDENT OF BUILDING AND LOAN ASSOCIATIONS TO APPROVE PLAN FOR SALE OF ASSETS OF BUILDING AND LOAN ASSOCIATION DISCUSSED.

SYLLABUS:

The power of the Superintendent of Building and Loan Associations of Ohio to approve a submitted plan for the sale of substantially all of the assets of a building and loan association taken over by said Superintendent for liquidation pursuant to section 687, 687-1, et seq. of the General Code discussed.

COLUMBUS, OHIO, November 15, 1934.

HON. HARRY L. EVERTS, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

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

“With the written consent and approval of the Director of Commerce, the Superintendent of Building and Loan Associations of Ohio

took possession of all the business, property and assets of an Ohio Building and Loan Association for purpose of liquidation pursuant to the provisions of Section 687, 687-1 et seq., General Code of Ohio, subsequent to the effective date of the so-called 'Eikenberry Act' (Section 687, 687-1 to 21, General Code of Ohio) relating to the liquidation of building and loan associations in Ohio, as enacted by the 90th General Assembly of Ohio. The liquidation proceedings had continued for more than one year prior to the adoption of the amendments to said Act by the special session of the Legislature which became effective on or about June 30th, 1934. The amended sections grant to the Superintendent in possession of the business, property and assets of any domestic building and loan association on such terms and conditions as a court or a judge may by order approve authority to

'Sell, lease, exchange or otherwise dispose of in whole or in part any or all of the property and assets of such association and accept therefor such considerations as the court or a judge may by order approve and make distribution of such considerations, all as more specifically set forth in Section 687-9a of the General Code' (Section 687-9, General Code), and Section 687-9a, G. C. Sub-Section 2 provides:

After paying or providing for the payment of the expenses of liquidation as provided in section 687-14 of the General Code, and after cancelling such claims or demands, distribute the considerations remaining in his hands in kind, or the proceeds or avails thereof, as dividends, among the creditors, depositors and shareholders of such association, as provided in section 687-15 of the General Code, depositing unclaimed dividends in kind or otherwise, as provided in section 687-17 of the General Code', and said section further provides:

'No transaction authorized pursuant to this section, nor the issuance of securities in connection therewith, shall be subject to title IX, division 1, chapter 2, of the General Code, the court or judge may require, by order and in the manner provided in section 687-12 of the General Code, an appraisal of any assets and property of an association proposed to be so sold, leased, exchanged or otherwise disposed of as in this section provided.'

The association involved was of the type generally known as a deposit association. According to the books of the association, it had deposits on its books as liabilities at the time the Superintendent took possession amounting to more than fifty times its issued and outstanding capital stock. The institution is insolvent to such an extent that if the full 100% constitutional stockholders' liability were assessed and recovered, the aggregate of the assets and stockholders' liability assessments would be insufficient to pay the claims of the depositors in full.

Originally the assets of the association consisted principally of mortgage notes representing loans made on the security of real estate. Defaults and resulting foreclosure have converted many of the real estate mortgage loans into owned real estate so that at this time the assets consist of approximately one-half mortgage notes and one-half owned real estate.

Most of the legal problems affecting the title to assets in the association have been judicially determined and sufficient liquid assets have been and will be acquired within the next few months to permit the payment of a dividend of approximately 10% to the depositor creditors.

An official appraisal of the assets based on today's values is being completed and financial condition of the institution is being determined on the basis of present day values.

It is now proposed to turn over the operation, management and control of the assets formerly belonging to the association to the persons entitled to the ultimate distribution thereof pursuant to the following plan involving the payment of a cash dividend and the sale and exchange of the remaining assets in bulk and a distribution of the proceeds thereof in kind in the course of the following proceedings:

1. The organization of a corporation under the General Corporation Act of Ohio authorized to engage in a general mortgage, loan, and real estate business.

2. The formation and execution of a contract between said corporation and the Superintendent in charge of the liquidation of the association whereby substantially all of the business, property and assets of the association in liquidation will be exchanged for debenture bonds and shares of the said corporation to be delivered to the Superintendent for distribution to claimholders as hereinafter provided.

3. The submission of the plan to the depositors and shareholders for written approval by them of the plan and for their assent to a court order to be entered approving the plan.

4. The filing of an application by the Superintendent for an order of Court approving the plan and due publication of a notice of the time, place and purpose of the hearing on said Superintendent's application in a newspaper of general circulation in the county in which the principal place of business of the association is located for four consecutive weeks prior to the date of hearing.

5. A formal court hearing duly and upon Superintendent's application and the formal approval by an order of the Court of the terms and conditions of the plan of sale and exchange of the assets for bonds and stock of the said corporation and of the distribution of the proceeds or avails of the liquidation in cash and in kind to the claimants.

6. The transfer of the title to all of said property and assets of the association, except the cash dividend and rights of the Superintendent in disputed or litigated matters, for the bonds and shares of the said corporation; the said bonds and shares to be delivered to the Superintendent or to his order in such denominations and amounts as will facilitate the redistribution in kind to those entitled to receive distribution of the assets of the association.

7. The Superintendent will, in the contract and in the order of court, retain a small portion of the assets of the association for the purpose of completing pending litigation and of retaining control of the estate in liquidation pending the prosecution of stockholders' liability suits and similar undetermined issues. Eventually distribution

of any net balance of funds accruing to the Superintendent as a result of the completion of these pending issues will be made to the new corporation and its stockholders.

8. As a condition precedent to his approval of the plan and the procedure, the Superintendent reserves the right to approve the corporate structure, its capitalization, the personnel of its first Board of Directors, and its first officers for the purpose of assuring competent management for the assets of the new company during its first period of operation after the plan is effective but thereafter the control of the corporate affairs would repose in the hands of the shareholders and the directors without supervisory rights or duties remaining in the Superintendent.

9. The distribution to those entitled to receive distribution of:

- (a) Ten percent (10%) of the amount of their claims in cash distribution dividend, except as to small claims for which provision is hereinafter made in (c).
- (b) Distribution of all of the bonds and all of the shares received by the Superintendent from said corporation in exchange for the assets, pro-rata as a distribution in kind, except as to small claims for which provision is hereinafter made in (c).
- (c) As an exception to the distributions provided in (a) and (b) herein, claimants holding claims too small to justify the expense of repeated handling, will receive a distribution in cash equivalent to the estimated aggregate pro-rata distribution to those receiving cash, bonds and shares, in lieu of all other distribution in cash or in kind on their claims.
- (d) Upon completion of all of the litigation, collection of stockholders' liability and other necessary proceedings by the Superintendent and after allowing and making a deposit with the State treasurer to conform to the statute as to the rights of holders of unproved and uncalled for claims, the Superintendent, pursuant to the provisions of the exchange contract, would deliver the balance of the proceeds of the liquidation to the corporation for the benefit of those entitled to the assets thereof.

Assuming the desirability of such plan to terminate the liquidation proceedings and to turn over the assets to the equitable owners of the assets of a building and loan association and without reference to any particular association, I desire your official opinion whether the Superintendent in charge of the liquidation of such an Association may lawfully approve, comply with and carry out the provisions of a plan of the kind and character above stated; also whether such transaction and the proposed issuance of such securities in connection therewith are exempted from the provisions of the Ohio Securities Act, particularly in view of the fact that qualifying shares in the proposed corporation may be issued to persons not creditor-claimants of the Association; also whether the Court may lawfully approve the proposed transaction; also whether such a plan approved by the Superintendent and by the Court may be carried into effect without the approval of all of the claimants against the Association."

The questions submitted involve an examination and interpretation of the so-called Eikenberry Act enacted by the 90th General Assembly, effective February 27, 1933, being sections 687 et seq. of the General Code and the amendments thereto, passed at the special session of the 90th General Assembly, effective June 29, 1934.

Section 687-9 as originally enacted conferred on the Superintendent, with the approval of the Court, power to sell or exchange assets of a building and loan association taken over by him for liquidation, the consideration for which may be in whole or in part claims against such association. As amended said section extended the power of the Superintendent so as to authorize him to accept for the sale of assets "such considerations as the court or a judge may by order approve and make distribution of such considerations, all as more specifically set forth in section 687-9a of the General Code."

Section 687-9a, subsection 1 authorizes the Superintendent, after application to the Court, and on such terms and conditions as such Court may by order approve, to accept for the sale of assets considerations which may be in whole or in part claims or demands against the association *or stocks, bonds or other instruments for the payment of money.*

Sub-section 2 of section 687-9a authorizes the Superintendent to distribute the considerations remaining in his hands after the payment of expenses, in kind, as dividends among the creditors, depositors and shareholders of such association.

Prior to such amendment there was no express provision in the code permitting the Superintendent to make distribution in kind.

By the enactment of the Eikenberry Act and the subsequent amendments above referred to the legislature very evidently intended to provide the Superintendent with greater freedom of action designed to better enable him to work out the problems of building and loan associations taken over by him, for the benefit of the creditors and real owners of such associations, namely, the depositors and share holders, in a more speedy, flexible and effective way.

The Supreme Court of Ohio, in the case of *Paul A. Warner, Superintendent, etc., vs. The Mutual Building and Insurance Company*, 128 O. S. 37, held that the Superintendent of Building and Loan Associations is a trustee for the benefit of the creditors of the institution and for the institution itself, and that "the administration of such trust is provided for by statute and any proceeding questioning his powers or rights as such trustee is a chancery proceeding."

Any question as to the legal necessity for all sales of assets being for cash and the payment of dividends in cash was eliminated, and the express right and authority was vested by the legislature in the Superintendent to sell any or all assets for such considerations as the Superintendent might deem advantageous and as may be approved by the Court, subject to the terms and conditions imposed by the Court, upon proper application.

When the legislature determined that sales could be made for considerations other than cash, the practical question immediately presented itself as to whether or not it might not at times and under certain circumstances be advantageous to deliver the consideration itself to those entitled to distribution, and leave it to the distributee to determine upon a proper time to convert the consideration into cash, rather than require the Superintendent under all circumstances to convert the consideration into cash merely in

order to make a distribution in money. It was therefore provided not only that the Superintendent might receive payment other than in cash, but that he could distribute the considerations received in kind.

This manner of distribution is not new in Ohio, for it is legally permissible in the settlement of estates and also in cases of distribution to shareholders where there is a voluntary dissolution of a general corporation.

The Court in 128 O. S. 37, supra, in its opinion says:

“Thus it seems that when the association is defunct membership ceases and all contracts must of necessity be set aside. It is upon the theory of the rescission and abrogation of the contracts that equity steps in and winds up its affairs *and makes a ratable distribution of assets.*”

The Court cites 4 Ruling Case Law, 384, Section 39.

It would seem, therefore, that those holding claims against the association are entitled to a ratable distribution of the assets of the association and it is within the power and authority of the legislature to determine the method and manner of making such distribution, having in mind the equitable rights of all claimants.

Especially significant is the statement in your letter that it is proposed by the plan to turn over the operation, management and control of the assets formerly belonging to the association to the persons entitled to the ultimate distribution thereof, through the organization of a new corporation under the general corporation laws of Ohio whereby substantially all of the property and assets of the association in liquidation will be exchanged for debenture bonds and shares of the said corporation, to be delivered to the Superintendent for distribution to claim holders in accordance with their respective rights. The effect of this undoubtedly will be that instead of the liquidation continuing under the Superintendent, the assets will be transferred to a new corporation and the interests of the various claimants will be transferred from frozen assets in an insolvent association, over which they have no control and as to the assets of which they have only the right to a liquidating dividend, to a new, solvent, going institution as to the assets of which their proportionate rights are preserved, and in addition they are given the power of management and control of their own property. This plan would seem not only not to be violative of any legal or equitable principles but in line with the evident intention of the legislature, as shown by the enactment of the above laws.

It involves a question of sound judgment on the part of the Superintendent acting as trustee, to which is added the sound judgment of the Court after hearing, of which hearing notice must be given, coupled with the preservation of the right on the part of any one prejudiced by any act of the Superintendent in exceeding or abusing his powers and discretion.

It is therefore my opinion that the Superintendent in charge of such an association as you describe, and the Common Pleas Court of the county wherein such association is located, may lawfully approve, comply with and carry out provisions of a plan of the kind and character outlined in your letter.

You also inquire as to whether the transaction and the proposed issuance of the securities described in connection therewith are exempted from the provisions of the Ohio Securities Act, particularly in view of the fact that qualifying shares in the proposed corporation may be issued to persons not creditor claimants of the association.

Sub-section 3 of section 687-9a of the General Code reads in part as follows:

"No transaction authorized pursuant to this section nor the issuance of securities in connection therewith shall be subject to title IX, division I, chapter 2 of the General Code."

An examination of the two publications of the Ohio General Code in general use in Ohio shows that in one said title IX, division I, chapter 2 embraces the Ohio Securities Act while in the other it reverses the Uniform Stock Transfer Act, the Ohio Securities Act in said publication being title IX, division I, chapter 1a.

Both of said publications were available for the use of the members of the legislature.

It therefore becomes necessary to determine whether the legislature had in mind the Ohio Securities Act or the Uniform Stock Transfer Act when it enacted section 687-9a.

It is obvious that the Uniform Stock Transfer Act has no relevancy or pertinency to the transaction authorized by said section 687-9a nor to the issuance of securities in connection therewith, and the legislature very evidently intended its reference to be to the Securities Act which is related and pertinent to the subject matter of the legislation.

The cardinal rule of statutory construction is to ascertain legislative intent, and where that intent is obvious in subserving a manifest purpose, that construction which will effectuate such manifest purpose will be adhered to by the courts.

To construe the reference of section 687-9a to the Uniform Stock Transfer Act would be imputing to the legislature an intent to do a vain thing, and such a construction is not favored by the courts.

It is therefore my opinion that the reference of said section 687-9a is to what is known as the Ohio Securities Act, the title of which reads:

"AN ACT

To regulate the sale of bonds, stocks and other securities * * * and to prevent fraud in such sales."

The applicable sections are 8624-1 et seq. of the General Code.

If it were not for the provisions of the above quoted section, there is no doubt in my mind but that such securities would not be exempt, and it is therefore necessary to discuss the effect of the new legislation in relation to the provisions of the Ohio Securities Act. What did the legislature have in mind and what was its purpose? It knew that the Superintendent could not issue securities of any kind, having only the powers granted to him by law, and an examination of the building and loan laws indicates that no such power was conferred upon him. The legislature had already provided that the Superintendent could sell assets of an association and take in payment thereof stocks and other securities of a corporation; and since the acceptance of securities was in connection with "a transaction authorized pursuant to this section" (687-9a), it is very evident that the lawmakers intended to exempt from the operation of the Securities Act such stock and other securities as were issued by a corporation and paid and delivered to the Superintendent as consideration for the sale of assets. Since the Depart-

ment of Commerce includes both the Division of Securities and the Division of Building and Loan Associations, it is evident that the legislature felt the investing public would be protected in the issuance of such securities, that the Superintendent would not approve any issue which did not fully protect the investing public and that his approval and consent to take the securities rendered unnecessary the approval and certification thereof by another division of the same department.

It follows that in my opinion such securities as are actually paid to and received by the Superintendent as consideration for the sale of assets, are exempt from the Ohio Securities Act.

It is my opinion that qualifying shares in the proposed corporation issued to persons not creditor claimants of the association are not exempted under the provisions of section 687-9a, not being a transaction authorized by said section, or being the issuance of securities in connection therewith, for neither the creditors nor the Superintendent get such shares. However, in this connection I direct your attention to the last part of section 8624-4, General Code, which exempts "the sale of subscriptions for its shares by a newly formed corporation not exceeding the amount necessary to hold a first meeting of creditors."

You also inquire whether such a plan may be carried into effect without the approval of all of the claimants against the association. In the case you present we have an association taken over by the State and whose assets are in the hands of the Superintendent as a trustee under court supervision with the right of claimants to receive a ratable distribution of assets. According to the plan submitted, all of the claimants are to receive their just and equitable proportion of the assets, the manner and procedure both specifically set forth by law. No provision of the law requires any consent on the part of the claimant, and it is very evident that it was not the intention of the legislature to require the consent of the claimants to the exercise of any power conferred upon the Superintendent as trustee in the liquidation proceedings.

The rights of the claimants are provided for in the law which gives them a right in equity to take action whenever the Superintendent exceeds or abuses his power or discretion. It is therefore my opinion that the consent of the claimant is not necessary to a consummation of the plan.

As to the distribution of cash in lieu of cash, bonds and shares to claimants whose claims are too small to justify the expense of repeated handling, it is my opinion that if a distribution other than in cash to such small claimants would involve expense out of proportion to the size of the claim to such an extent as to reduce the amount distributable to all claimants, including such small claimants, it is within the discretion of the Superintendent, subject to review by the Court, to make a reasonable classification of the claims, upon the condition that the amount so paid in cash is equivalent to the proportion due claimants, based on the value of the entire assets.

An application must be made to the Court for the approval of the entire plan, and since due notice must be given to all claimants, the Court has power, as a court of equity, to protect the rights of all claimants and a duty to make no order authorizing an unreasonable classification or which will be violative of any of the equitable right of the claimants.

No approval as to any particular building and loan association is requested in your communication as your inquiry is solely one of the power and authority of the Superintendent in the execution of a plan such as outlined

in your letter. I am not asked, neither do I express any opinion as to whether your approval or the approval of the Court should be given to the plan submitted, this being a matter entirely within your own and the Court's discretion, as provided by law. However, may I say that a great responsibility rests upon you as Superintendent of Building and Loan Associations, in approving the transaction of the nature outlined by you, and it is my judgment that you have full authority, and that you should exercise such authority before issuing your approval to such transactions, to satisfy yourself as to the propriety of the plan, and, if you deem it expedient, to require, as a condition of your approval and consent, that the capital structure of the new corporation, the membership of its board of directors and the personnel of its executives are of such nature and character as to meet your approval and conform to the highest standards of business practice.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3456.

APPROVAL, ABSTRACT OF TITLE, ETC., TO LAND IN HANOVER
TOWNSHIP, ASHLAND COUNTY, OHIO.

COLUMBUS, OHIO, November 15, 1934.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval an abstract of title, warranty deed, encumbrance record No. 6, and Controlling Board certificate relating to two tracts or parcels of land in Hanover Township, Ashland County, Ohio, which the state of Ohio proposes to purchase for the use of the Ohio Agricultural Experiment Station and which are described as follows:

Being the North-west Quarter of the South-west Quarter of Section 10, Township 19, Range 16, containing Thirty-five (35) acres of land, more or less; and, also, the West half of the South half of the North-west Quarter of Section 10, Township 19, Range 16, containing Forty (40) acres of land, more or less.

This property is owned of record by William H. Trompower, Minerva Van Scoder, Anna Kuhlmeier, Lois Kellogg, Lillian Sprang, Bernice Westfall and Norman L. Trompower, heirs at law of Rachel A. Trompower, deceased.

Upon examination of the abstract of title of the above described tracts of land, I find that the above named persons, heirs at law of Rachel A. Trompower, deceased, have a good and indefeasible fee simple title to this property, and that the same is free and clear of all encumbrances except the undetermined taxes on the property for the year 1934, which taxes are now a lien upon the property. In this connection, it is noted that under date of February 26, 1907, Rachel A. Trompower, then the owner of this property, executed a mortgage on the property to one Jacob Schmidt to secure the payment of a promissory note of even date therewith, in the sum of two hundred dollars (\$200.00), and it was payable in one