

1855.

INDUSTRIAL RECOVERY CODE—FORMS OF “CERTIFIED COPY” AND  
“EXEMPLIFIED COPY” AUTHORIZED TO BE FILED WITH GOV-  
ERNOR OF OHIO, DISCUSSED AND SET FORTH.

SYLLABUS:

*Forms of “certified copy” and “exemplified copy” for Federal Industrial Recovery Codes authorized to be filed with the Governor Ohio pursuant to, and for the purpose of House Bill No. 705 enacted by the 90th General Assembly, discussed and set forth.*

COLUMBUS, OHIO, November 10, 1933.

HON. THEO. H. TANGEMAN, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion in which you enclose a letter from the Assistant Counsel for the National Recovery Administration, presenting the following question which I quote from such enclosure:

“I direct your attention to that portion of your State Act which provides as follows:

Section 3. Anything in the common or statute law of this state with respect to contracts in restraint of trade or commerce, or of competition, to the contrary notwithstanding, it shall be lawful:

(a) For any person, members of one or more trade or industrial associations or groups, to meet, confer and agree upon a code or codes of fair competition for the trade or industry, or subdivision thereof, represented by them. When and if any of such code shall have been approved by the president of the United States, pursuant to section 3 (a) of title I of the national industrial recovery act, and a copy thereof, including any conditions imposed by the president and any exceptions to and exceptions from the provisions thereof, approved by the president, and *duly certified or otherwise exemplified by the president, or such officer or agency as the president shall have designated for the purpose, shall have been filed with the governor*, the provisions thereof shall be the standards of fair competition for such trade, or industry, or subdivision thereof, and for all purposes engaged therein in this state as regards intrastate commerce therein and whether or not affecting interstate or foreign commerce and such code or codes where so approved and with such conditions, exceptions and exemptions, and any action taken in compliance therewith shall be lawful, anything in the common or statute law of this state to the contrary notwithstanding. (Italics mine.)

Inasmuch as it would appear to the writer that, in order to make his provision of the law effective, it must be complied with in accordance with the laws of Ohio and not in accordance with Federal laws. I would very much appreciate an opinion setting forth the form to be used in exemplifying or certifying the codes which are approved by the President, together with advice as to whether the head of a Department of the National Recovery Administration will be a proper person to certify or exemplify the law. In this connection, the President of the United States has issued an Executive Order empowering General Johnson to ad-

minister Title I of the National Industrial Recovery Act, with the exception of certain powers which he has delegated to the Secretary of Agriculture. The question which I particularly have in mind is, will a certification by a proper officer of the National Recovery Administration acting under this Executive Order be sufficient to comply with the Ohio Statutes?"

I do not herein consider or pass upon the constitutionality of any provision of either the federal act or the state act, the right to determine the constitutionality of laws being one for the courts.

The Ohio statute to which you refer is a part of Section 3 of House Bill No. 705 enacted by the 90th General Assembly. Such statute contemplates that when a code has been adopted and approved by the President of the United States pursuant to the provisions of Sections 3 to 10 of Public Act No. 67 enacted by the 79th Congress, popularly referred to as "The National Industrial Recovery Act" such code shall be accepted as a code for the purposes contemplated by House Bill No. 705.

The legislature, having in mind the provisions of Section 2 (b) of such act, authorizing the president to delegate the powers given him under such act, has provided that when a copy of such code exemplified or certified by the officer who under a federal act is authorized to approve or consent on behalf of the federal government, to the adoption of a National Industrial Recovery Code, is filed with the Governor, such code shall be also the code controlling the industry causing the same to be so filed for the purposes of such House Bill No. 705.

Your inquiry is particularly as to a form to be attached to a copy of such codes adopted under the so-called "National Industrial Recovery Act" which will cause them to be "duly certified" or "otherwise exemplified" by the officers mentioned in such House Bill No. 705. "Certified copy" has been defined as: "A copy signed and certified as true by the officer to whose custody the original is intrusted." 10 Ruling Case Law, 1104; Ballentine's Law Dictionary. "Duly" means that the act was done properly, regularly, and according to law. See *O'Donnell vs. People*, 224 Ill. 218; Ballentine's Law Dictionary. "Exemplified copy of a document" means a copy of the document certified by an officer as a true and correct copy under his official seal. See 10 Ruling Case Law, 1104; 1 Dayton Term Reports, 163.

It would thus appear that House Bill No. 705 authorizes the copy of the Federal National Industrial Recovery Code to be authenticated in either of two methods, that is, by certified copy or by an exemplified copy.

There is no statutory form of certificate for a certified copy. However, an examination of the cases in which a certified copy of a document was introduced in evidence over the objection of counsel would indicate that a certification, in substantially the following form, attached to the document or copy would convert the copy into a certified copy:

District of Columbia:

I, ..... Administrator of the National Recovery Administration, do hereby certify that the above is a true and correct copy of the Code of Fair Competition for the ..... industry filed pursuant to, and approved by the President of the United States pursuant to the provisions of the "National Industrial Recovery Act" enacted by the 73d Congress (H. R. 5755) approved June 16, 1933.

.....  
Administrator

(This paragraph may be added, but is not necessary.)

Sworn to and subscribed before me a Notary Public in and for such district.

.....  
Notary Public.

(SEAL)

Nor is there a statutory form of "exemplified copy" of a document. I believe, however, that a certificate in substantially the following form would satisfy the requirements of House Bill No. 705 :

I, Franklin D. Roosevelt, President of the United States of America, do hereby certify that the above is a true and correct copy of the Code of Fair Competition for the ..... Industry filed with, and approved by me, pursuant to the provisions of "The National Industrial Recovery Act" (H. R. 5755), enacted by the 73d Congress.

.....  
President of the United States of America.

(SEAL OF OFFICE)

It would appear that the certified copy should be certified by Hugh Johnson, Adm'r., etc., as to all codes, other than those dealing with industries engaged in the handling of foodstuffs and tobacco products, which should be certified by the Secretary of Agriculture, by reason of the provisions of the pronunciamientos of the President under dates of June 16, 1933, and June 26, 1933, respectively, which read in part, as follows :

"EXECUTIVE ORDER.

Pursuant to the authority of 'An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes', approved June 16, 1933, and in order to effectuate the policy set forth in Title I —Industrial Recovery—of said Act:

1. I hereby appoint Hugh Johnson to be the Administrator for Industrial Recovery under said Title I of said Act.

(Signed) FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,  
June 16, 1933."

"EXECUTIVE ORDER.

Pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, I hereby delegate to the Secretary of Agriculture all the functions and powers (other than the determination and administration of provisions relating to hours of labor, rates of pay, and other conditions of employment) vested in me by said Title I of said Act with respect to trades, industries or subdivisions thereof engaged principally in the handling of milk and its products, tobacco and its products, and all foods and foodstuffs, subject

to the requirements of Title I of said Act, but reserving to me the power to approve or disapprove of the provisions of any code of fair competition entered into in accordance with Title I of said Act. This Order is to remain in effect until revoked by me.

(Signed) FRANKLIN D. ROOSEVELT

June 26, 1933."

Since the Secretary of Agriculture is an officer having a seal, he might authenticate the "authenticated copies" of codes with reference to industries engaged in the handling of foodstuffs and tobacco products. When such exemplification is presented his name, title and seal should be substituted for that of the President in the above authentication form.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1856.

DISTRIBUTION OF TAXES—UNJUST ENRICHMENT OF ONE POLITICAL SUBDIVISION AT EXPENSE OF ANOTHER THROUGH ERRONEOUS DISTRIBUTION—HOW RECOVERED—STATUTE OF LIMITATIONS—AUTHORITY OF COUNTY AUDITOR TO RECTIFY ERROR.

SYLLABUS:

1. *Where a political subdivision has been enriched at the expense of another subdivision, by reason of there having been distributed to it through a mistake of fact, tax revenues which should have been distributed to the other subdivision, the latter may recover from the former in an action in the nature of an action for money had and received, the amount which the former subdivision had been so unjustly enriched.*

2. *In such an action recovery is limited to the amount of such unjust enrichment which has accrued to the defendant during the six years immediately preceding the filing of the action provided the statute of limitations is pleaded by the defendant.*

3. *In an action by a political subdivision against another subdivision on account of the loss to it of public revenues which had wrongfully been distributed to the defendant subdivision, the statute of limitations being pleaded, the time should be computed from the date when the officer whose duty it was to distribute the revenues should have distributed them to plaintiff and not from the time the plaintiff learned of the wrongful distribution.*

4. *A county auditor is without authority to correct, on his own initiative, errors in apportionments of real estate taxes at the next or any succeeding apportionment after an erroneous distribution has been made.*

5. *By force of Section 2602, General Code, a county auditor is authorized, when settling with the treasurer on account of general personal and classified property taxes and when apportioning those taxes to the taxing districts entitled to the same, to correct any error which may have occurred in the apportionment of these taxes at any previous settlement.*

6. *Where the proceeds of tax levies have been erroneously distributed to a political subdivision not entitled to the same, restitution may lawfully be made by*