under date of June 7, 1911, 102 O. L., 293. By this act that part of the Ohio Canal between the west end of Buckeye Lake and the point where the canal joins the Ohio River near Portsmouth, Ohio, was abandoned for canal purposes and provision was made therein for the sale or lease of the canal lands so abandoned. By Section 3 of said act the State Board of Public Works and the Chief Engineer of Public Works, acting as a joint board, were authorized to sell such abandoned canal lands or to lease the same for a term of not less than fifteen years or of not more than twenty-five years. There is now no such officer as the Chief Engineer of Public Works and inasmuch as all the powers and duties of the Board of Public Works with respect to the sale or lease of canal lands are now conferred upon the Superintendent of Public Works as such, subject to the approval of the Governor and the Attorney General, you are authorized to execute the lease here in question.

Upon examination of the lease, I find that the same has been properly executed by you as Superintendent of Public Works and by The Pickaway Farm Bureau, by the hand of T. M. Glick, President of said company, pursuant to the authority of a resolution of the Board of Directors of the company duly adopted under date of June 8, 1935.

Upon examination of the provisions of the lease and of the conditions and restrictions therein contained, I find the same to be in conformity with the provisions of the act of the legislature above referred to and with other statutory provisions relating to leases of this kind. I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5633.

BANKS—MAY INVEST IN SECURITIES OF A SINGLE CORPORATION HAVING MORE THAN ONE ISSUE OF STOCK —LIMIT OF SUCH IVESTMENT.

SYLLABUS:

1. Where a single corporation has outstanding several issues of securities meeting the requirements of Section 710-111, sub-paragraph (i), General Code, a bank is limited by Section 710-121, General Code to investing not more than 20% of its capital and surplus in all of said issues combined.

2. Section 710-122, General Code, relates solely to "loans" made by a

bank, and in determining the "total liabilities" of a corporation, which under said section shall not exceed 20% of the bank's paid-in capital stock and surplus, "investments" made by the bank in securities of such borrowing corporation should be excluded.

3. If an investment when made is within the limitation of Section 710-121, General Code, or a loan when made is within the limitation of Section 710-122, General Code, such investment or loan does not become excessive within the meaning of the respective sections by virtue of a subsequent reduction in the bank's surplus, through losses or otherwise, whereby the investment or loan exceeds 20% of the bank's capital and surplus.

COLUMBUS, OHIO, May 28, 1936.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: I have your request for my opinion, which reads:

"Sub-paragraph (i) of Section 710-111 of the General Code permits banks to invest in corporate mortgage bonds, collateral trust bonds and debenture bonds or notes meeting the requirements prescribed therein.

Section 710-121 of the General Code provides in part:

'Not more than twenty per cent of the capital and surplus of a bank doing business under this chapter shall be invested in any one stock or security', etc.

Section 710-122 of the General Code provides in part as follows:

'The total liabilities, including overdrafts, of any one person, company, corporation or firm, to any bank, either as principal debtor or as security or indorser for others, for money borrowed, except as additional security for a liability previously incurred, at no time shall exceed twenty per cent of its paid-in capital stock and surplus;' etc.

Three questions have been presented to me in the course of examinations involving the portions of the sections of the General Code of Ohio to which I have made reference above and upon which I would appreciate your opinion.

1. Does the limitation prescribed in Section 710-121 of the General Code forbid the investment by a bank of more than twenty per cent of its capital and surplus in securities having the

qualifications mentioned in sub-paragraph (i) of Section 710-111 when each of such securities is of a different issue and the collateral or property securing each is different and provided that not more than twenty per cent of the capital and surplus of said bank is invested in any one of such issues?

2. In ascertaining the total liabilities of any one company, corporation or firm to any bank for the purpose of requiring compliance with that portion of Section 710-122 of the General Code above quoted, should the investment by such bank in securities issued by a company, corporation or firm be included with loans made by said bank to such company, corporation, or firm?

3. When an investment is made within the limitations prescribed in Section 710-121 or a loan within the limitations prescribed in Section 710-122, but subsequent thereto the surplus of the investing or loaning bank is reduced through losses or otherwise to an extent which makes such investment or loan in excess of the statutory limitation, should I require such investment or loan to be reduced to an extent sufficient as to bring the same within twenty per cent of the existing capital and surplus?"

Section 710-111, General Code, as amended 115 O. L., Pt. 2, p. 284, enumerates the securities in which a bank may invest its capital, surplus, undivided profits and deposits. Among the classes of authorized investments are:

"(i) Mortgage bonds, collateral trust bonds, debenture bonds or notes of any regularly incorporated company which, or the constituent companies comprising which for four (4) years prior to the date of purchase has earned over and above all fixed charges other than interest on indebtedness, an amount equal to at least double the interest charges which it will be required to pay upon its outstanding obligations; or mortgage bonds, collateral trust bonds, debenture bonds or notes of any regularly incorporated company, which bonds or notes plus all prior incumbrances are outstanding in an amount not in excess of 50% of the actual value of the property securing said bonds or notes."

Section 710-121, General Code, reads:

"Not more than twenty per cent of the capital and surplus of a bank doing business under this charter (chapter) shall be invested in any one stock or security unless it be in bonds or other interest bearing obligations enumerated in paragraphs a, b, c,

d, e and h of section 111 of this act; or in the stock of a corporation owning the land, building or buildings occupied by such bank for its banking quarters, and then not exceeding sixty per cent of its capital and surplus shall be so invested, which shall be carried on the books of the bank as an investment or equity in real estate; or in the bonds, notes, acceptances, debentures or first lien securities of banks or corporations chartered or incorporated under the laws of the United States and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership or control of local institutions in foreign countries or in such dependencies or insular possessions; including the bonds, notes, acceptances, debentures or first lien securities of one or more banks or corporations chartered or incorporated under section 25a of the Federal Reserve Act, as approved December 24, 1919."

Since paragraph (i) of Section 710-111, *supra,* is not excepted, it is necessary to determine whether the language "any one stock or security", as used in Section 710-121, *supra,* refers to any one "issuer" or any one "issue" of bonds or notes.

Very often corporations issue various classes of securities. An "issue" is defined as "a class or series of bonds, debentures, etc., comprising all that are emitted at one and the same time." *Black's Law Dictionary* (2nd Ed.); 6 *Fletcher, Cyclopedia Corporations* (1931), page 537; *Webster's New International Dictionary; Bell County Lightfoot,* 104 Tex., 346, 138 S. W., 381.

The rights of the holders of different issues of stocks, bonds or debentures of the same issuing corporation may differ. Issues of stocks vary as to preference rights, convertibility, and the like, while bonds and debentures differ with respect to security and other features. It may be contended that "any one stock or security" refers to any one issue because of such distinctions.

I find no judicial construction of the language in question. I am reliably informed that for many years your department and its examiners have construed the 20% limitation as applying to the combined issues of securities of any particular corporation.

The following statement appears in the opinion of the Supreme Court in the case of *Industrial Commission* v. *Brown,* 92 O. S., 309, 311:

> "Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do."

This principle has been applied in numerous cases, including the following: *State, ex rel.* v. *Akins,* 18 C. C., 349; *State, ex rel.* v. *Graves,* 89 O. S., 24; *State* v. *Evans,* 21 O. A., 168.

The function of construction is to ascertain the legislative intent. The provision in question is ambiguous and is subject to two interpretations. However, the purpose, is clear, namely, to diversify investments by banks and thereby reduce the probability of loss. It may be argued that sufficient protection is afforded if a bank is permitted to invest 20% of its capital and surplus in bonds of the X Railroad, secured by first mortgage upon its right of way between Columbus and Cleveland, and 20% in another issue of bonds of the same railroad, secured by first mortgage upon its right of way between Columbus and Cincinnati.

On the other hand it may be pointed out that if the railroad should fail, both issues of bonds would no doubt decline in market value. It may be argued effiectively that since the success or failure of the corporation is so closely related to the value of the security and the realization thereon in event of default, it would be unsound to permit a bank to invest more than 20% in all of the securities of any one corporation.

I am unable to say that the language of the statute is so clear as to require an interpretation other than that adopted by long continued administrative practice. Such interpretation is in entire accord with the purpose of the statute, viz., to minimize losses in investments through diversification.

Your second question is whether investments in securities issued by a corporation should be included with loans in ascertaining the "total liabilities" of such corporation, as used in that portion of Section 710-122, General Code, quoted in your letter.

Prior to the enactment of the present banking act, Section 9790, General Code, placed a limitation upon "investments" and Section 9754, General Code, placed a limitation upon "loans". In an opinion of this office, reported in Opinions of the Attorney General, 1917, Vol. 1, p. 750, it was pointed out "that the power to loan and the power to invest funds of a bank are distinct * * *." It was thus held that Section 9790 applied strictly to investments and Section 9754 to loans.

Section 710-121, General Code, relating to investments by banks is above quoted in full. Section 710-122, General Code, reads:

> "A bank shall not lend, including overdrafts, to any one person, company, corporation or firm, more than twenty per cent of its paid-in capital and surplus, unless such loan be secured by first mortgage upon improved farm property in a sum not to exceed sixty per cent of its value.

The total unsecured obligation of any one person, company, corporation or firm, in any bank shall not exceed four per cent of the paid-in capital and surplus of such bank, unless such person, company, corporation or firm furnishes the bank with a statement of his or its financial responsibility prior to the extension of such credit.

The total liabilities, including overdrafts, of any one person, company, corporation or firm, to any bank, either as principal debtor or as security or indorser for others, for money borrowed, except as additional security for a liability previously incurred, at no time shall exceed twenty per cent of its paid-in capital stock and surplus; provided, however, that (1) the discount of bills of exchange drawn in good faith against actually existing values, (2) the discount of trade-acceptances or other commercial and business paper actually owned by the person, company, corporation or firm, negotiating the same, and (3) the purchase or discount of any note or notes secured by not less than a like face amount of bonds of the United States, or certificates of indebtedness of the United States, shall not be considered as money borrowed within the meaning of this section."

It seems obvious from a reading of these two sections that the Legislature has provided separately for limitations upon "investments" and "loans". The two sections appear to be mutually exclusive.

It is well settled that a construction which gives effect to every section and clause must be favored. *Pancoast* v. *Ruffin,* 1 O., 381; *Perkins* v. *Bright,* 109 O. S., 14. If "investments" are included in the "total liabilities" of any one person, firm or corporation, which must not exceed 20% of the bank's capital stock and surplus, under the third paragraph of Section 710-122, *supra,* the first part of Section 710-121, *supra,* is superfluous and no effect is given to it. This is true because under such construction Section 710-122 of the General Code would limit a bank's total investments in securities of a particular corporation plus loans to that corporation to 20% of one bank's paid-in capital and surplus. Under the canon of construction above stated, such interpretation is untenable.

It may be argued that both "loans" and "investments" create "liabilities" and that there is no real distinction between them. It is true that a lender on short term paper and the purchaser of a debenture or a bond are both creditors; that the maker of a demand note and a corporation issuing a twenty year bond are both borrowers and, as such, under a "liability" to repay. Nevertheless, in modern business practice there has come to be a distinction between a "loan" and an "investment."

Webster's Twentieth Century Dictionary defines "loan" as "any-

thing furnished for *temporary* use to a person at his request, on the condition that it shall be returned, or its equivalent in kind, with or without a compensation for its use; as * * * a loan of money."

The same authority defines "invest" as "To lay out, as money in the purchase of some kind of property, usually of a *permanent* nature; * * * as, to invest money in bank stock * * *."

As shown by the words italicized in the two definitions, the time element is an important factor distinguishing the two items. It is entirely reasonable that the Legislature should have recognized this distinction and prescribed different limitations with respect to investments and loans by banks, since the loaning of money is one of the very important functions of a bank.

Thus, although an "investment" in a general sense creates a "liability", I am of the opinion that it does not come within that term as used in Section 710-122, General Code, since it appears that such section, when read in conjunction with Section 710-121, General Code, relates entirely to "loans", whereas said Section 710-122 limits "investments."

I come now to consider your third question, whether you should require the reduction in a loan or investment, within statutory limitations when made, but now in excess of such limitations by virtue of a subsequent reduction in surplus through losses or otherwise.

Section 710-121, *supra,* limits a bank's investments in any one stock or security to 20% of its capital and surplus, while Section 710-122, *supra,* limits a bank's loans to any one borrower to 20% of its capital and surplus and further provides that the total liabilities of any one borrower "at no time shall exceed twenty per cent of its paid-in capital stock and surplus." Each section contains exceptions and provisions not material to your inquiry.

The purpose of such limitations was stated in *The Merchants' National Bank* v. *Wehrmann,* 69 O. S., 160, 170, as follows:

> "The restrictions contained in our banking laws are for the purpose of securing the solvency and stability of the banks; and the statutes should be so construed and the law administered as to reasonably bring about that end. The wealth and prosperity of the people depend, to a large extent, upon the soundness of the banks and the safety of the currency. The purpose of the government is to foster and encourage sound banking and preserve a safe currency; and it therefore allows national banks to collect claims due them, even though a statute or a rule of law or equity may have been infringed in the incurring of the debt."

National banks are limited in the matter of loans by Section 5200 R. S., as amended (12 U. S. C. A., Sec. 84), which provides that "The

total obligations to any national banking association of any person, co-partnership, association or corporation shall at no time exceed 10 per centum of the amount of the capital stock of such asssociation actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund."

By virtue of another statute (12 U. S. C. A., Sec. 93) directors who knowingly violate such provision are made liable for losses sustained. The case of *Anderson* v. *Akers,* 7 F. Supp., 924, rehearing denied 9 F. Supp., 151, was an action by the receiver of an insolvent national bank against the directors to recover losses resulting from numerous transactions including alleged excessive loans. In the course of the opinion the court said (7 F. Supp., 938):

> "Whether any particular loan to a borrower was thus excessive depends upon the question whether, just prior to the time of its making, the amount of the existing abligations of such borrower to the bank was such that the making of this loan either caused the total of such obligations to exceed the statutory maximum which was not exceeded until such loan was made, or else increased the excessiveness of the total of such obligations, which was already excessive before such loan was made."

Again the court said:

> "Questions as to the excessive character of the loan and as to the original amount of any such excess must be determined as of the time when such loan is made. If any loan of money by the bank to a debtor at the particular time when it is made causes or increases an excess of the total obligations of such debtor to the bank beyond the statutory maximum, all of that loan is illegal. *Corsicana National Bank* v. *Johnson,* 251 U. S., 68, 87, 40 S. Ct., 82, 64 L. Ed., 141."

In construing a statute in substantially the same language as Section 710-122, General Code, the court adopted the view that the time of making the loan governs in determining whether it is excessive. A loan within limitations when made is thus not rendered excessive by a subsequent reduction in surplus.

An intelligent and reasonable construction will be preferred over an absurd and impractical one. *Conrad* v. *Davies,* 14 C. C. C. (N. S.) 475; *State, ex rel.* v. *Edmonston,* 89 O. S., 93. We may suppose a case where total loans to a person, firm or corporation, evidenced by promissory notes, are within the 20% limitation of Section 710-122, General Code. Before the notes become due losses may so reduce the banks surplus that

the total loans may exceed the 20% limitation. If the loans should be held to have thereby become excessive, an anomalous result would follow. The superintendent of banks certainly could not require the borrower to pay the notes before due.

An order requiring reduction of such loans to 20% of the then existing capital and surplus might tend to endanger the stability of the bank, which would defeat the very purpose of the statute as stated in the case of *The Merchants' National Bank* v. *Wehrmann, supra.* It is even conceivable that such order with respect to loans which would be collectible when due might result in an impairment of the capital of the bank.

In specific answer to your questions, it is my opinion that:

1. Where a single corporation has outstanding several issues of securities meeting the requirements of Section 710-111, sub-paragraph (i), General Code, a bank is limited by Section 710-121, General Code, to investing not more than 20% of its capital and surplus in all of said issues combined.

2. Section 710-122, General Code, relates solely to "loans" made by a bank, and in determining the "total liabilities" of a corporation, which under said section shall not exceed 20% of the bank's paid-in capital stock and surplus, "investments" made by the bank in securities of such borrowing corporation should be excluded.

3. If an investment when made is within the limitation of Section 710-121, General Code, or a loan when made is within the limitation of Section 710-122, General Code, such investment or loan does not become excessive within the meaning of the respective sections by virtue of a subsequent reduction in the banks surplus, through losses or otherwise, whereby the investment or loan exceeds 20% of the bank's capital and surplus.

Respectfully,
JOHN W. BRICKER,
Attorney General.