

2527.

CORPORATION SOLICITING AND RECEIVING DEPOSITS OF MONEY
OR ITS EQUIVALENT IS DOING A BANKING BUSINESS UNDER
SECTION 710-2 G. C.

SYLLABUS:

A corporation soliciting and receiving deposits of money or its equivalent and issuing certificates of indebtedness to the depositor is doing a banking business under section 710-2, General Code.

COLUMBUS, OHIO, June 1, 1925.

HON. H. E. SCOTT, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“Banks in the state of Ohio have earned the confidence of the people in the community in which they are established. The only individuals or corporations that are permitted, under the law to receive money or its equivalent, on deposit as a business are banks, building and loan associations and title guarantee and trust companies.

“Section 710-2 of the General Code in part reads 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, * * *

“In the past few years it has become difficult for mortgage companies and finance companies to sell stock in their companies and thereby acquire capital. By mortgage companies, I mean those that deal in first and second mortgages on real estate and by finance companies, those that discount paper secured by chattels or indorsements, excluding from both of these classes banks or building and loan associations or title guarantee and trust companies. For the purpose of raising capital by some means other than selling their stock, mortgage companies and finance companies have resorted to different methods of inducing the public to deposit or leave money with them or loan money to them and have given to the person so depositing with or loaning to them a note or a certificate of indebtedness. There are a number of methods used by these companies to accomplish the purpose of having money deposited with them or loaned to them, but in principle they are about the same.

“I wish to submit to you the following statement of facts, showing the method used by one of these companies, together with circumstances and facts that probably should be considered together with the method used, and ask you the question whether or not the method used under the given set of facts and methods similar in principle do not constitute the receiving of money, or its equivalent, on deposit as a business.

“The Mortgage Company advertises in the Columbus Dispatch as is shown in the attached advertisement, marked and referred to as exhibit A. By this advertising the company invites the public, without discrimination, to leave money with it at a 7% interest rate and subject to withdrawal the same as time deposits or even demand deposits from a banking company.

“In the instance before us, approximately forty persons have in the past

year left with The Mortgage Company money and have received therefor the attached note or obligation called a certificate of indebtedness, marked exhibit B.

"The Mortgage Company uses a financial statement which it distributes to the public in printed form, a copy of which is attached hereto and marked exhibit C. This statement, it is to be noted, is made up in a manner similar to that used by banks in making and publishing their report of condition and is used in the same manner as bank statements are used.

"The office occupied by The Mortgage Company is built and arranged in the same manner as a banking room, by the use of gratings, windows and counters.

"This company is an Ohio corporation formed for the purpose of dealing in commercial paper, mortgages, mortgage bonds and collateral trust bonds.

"The Mortgage Company referred to herein is one of a number of companies carrying on their business in a method similar in a general way to the company referred to herein but varying the forms used as evidence of indebtedness to individuals. For this reason, it is requested that your answer to this communication be such as would cover the various companies similar to the one referred to herein and your opinion applicable to other sets of facts similar in principle in determining whether or not other companies are violating section 710-2, by receiving or accepting money, or its equivalent, on deposit as a business."

You also submit with your communication a certificate issued by a mortgage company as follows:

No. 199.

THE -----X----- MORTGAGE CO.

CAPITAL \$1,000,000.00

CERTIFICATE OF INDEBTEDNESS

Columbus, Ohio. -----192-----

Sixty days after written notice having been given, THE -----X----- MORTGAGE COMPANY promises to pay to the order of ----- DOLLARS (\$-----) value received, with -----% interest from ----- payable semi-annually on January 1st and July 1st of each year. Interest and principal payable at the office of THE -----X----- MORTGAGE COMPANY, ---X--- Street, Columbus, Ohio.

Countersigned by THE -----X----- MORTGAGE CO.

Secretary.

Vice President.

* * * *

Also a copy of an advertisement as follows:

WE PAY YOU 7% INTEREST

On Certificate of Indebtedness at The -----X----- Mortgage Co.

WITHDRAW AT ANY TIME
WITH INTEREST IN FULL

Your money can be withdrawn at any time without loss of interest after reasonable notice. You need not wait for the six-month period.

AMPLE SECURITY

These certificates are secured by many times their value in mortgages on Columbus homes.

If your money is not earning 7% call at our office for information.

CAPITAL \$1,000,000.00

THE -----X----- MORTGAGE COMPANY, -----X----- Street.

* * * *

Section 710-2, General Code, of Ohio provides 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 pass-book, a note, a receipt, or other writing, and unless the context otherwise required as used in this act includes commercial banks, savings banks, trust companies 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. All banks, including the trust department of any bank, organized and existing under laws of the United States, shall be subject to inspection, examination and regulation as provided by law."

This section defines the term "bank" and the exceptions to the rule. It also provides that all banks shall be subject to examination and regulation.

Your question will naturally turn upon the point as to whether such a corporation is soliciting, receiving, or accepting money or its equivalent on deposit as a business.

In the case of *The Security and Bond Deposit Company vs. the state, ex rel. Seney*, 105 O. S., page 113, the corporation was soliciting and accepting the deposit of liberty bonds with such corporation and was paying thereon interest in addition to the interests accruing upon such bonds and was using the money derived from the pledges from said bonds to carry on the business of making loans to customers. A suit was brought in quo warranto to oust the company from doing business on the ground that such corporation had offended against the laws of the state, misused its corporate authority, franchise and privileges, and assumed franchises and privileges not granted to it, in the particulars that it had unlawfully been carrying on a general banking business and had unlawfully solicited, received and accepted money or its equivalent on deposit, as a business, and had issued therefor its certificate of de-

posit, pass book, note, receipt or other writing, and had unlawfully assumed and exercised powers granted to banking corporations.

The court held:

"The company incorporated under the laws of this state for the purpose of 'contracting for and buying and selling securities and bonds, also borrowing and loaning on same; and making loans on real estate securities,' is not authorized to engage in a banking business and where such company solicits and receives government bonds, on deposit at its established place of business in this state, agreeing to return same or like bonds upon call, or at a time agreed upon, paying therefore a stipulated rate of interest in addition to that called for by the coupons attached thereto, its announced purpose being to use same as collateral to borrow money which shall constitute its working capital, such transactions are beyond its authority and will be enjoined."

On page 121 of the opinion, Matthias, judge, says:

"The relation of the defendant and its depositor is that of debtor and creditor rather than bailor and bailee, being substantially the relation of a bank and its depositor. * * *

"At least to the extent of soliciting and receiving such deposits the defendant is engaging in the banking business, and in that respect is acting without authority."

In the situation presented in your communication, the mortgage company is soliciting the deposit of money or its equivalent to be used by it in the carrying on of its business and issuing to the depositor a certificate of indebtedness payable at a certain stipulated time, and this would seem to bring the mortgage company within the rule laid down in *Security Company vs. the state*, supra. The relation between the mortgage company and the depositor is that of debtor and creditor and substantially the relation of bank and its depositor.

It is, therefore, my opinion that the corporation as set out in your communication to the extent of soliciting and receiving such deposits and issuing such certificates of indebtedness is engaging in a banking business.

Respectfully,
C. C. CRABBE,
Attorney General.

2528.

APPROVAL, BONDS OF SPRINGFIELD TOWNSHIP RURAL SCHOOL DISTRICT, RICHLAND COUNTY, \$3,000.00.

COLUMBUS, OHIO, June 1, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.