

statutes to publish the total estimated cost of a project in its form of proposal for a given project, as the statutes provide for such publication to be made by the filing of duplicate estimates in two public places before advertising for bids, and the public, which includes bidders for such project, is presumed to have knowledge of such publication and possess the right to have access to such estimates at all reasonable times; and, third, the Department of Highways is unauthorized to refuse to permit inspection by contractors or disinterested individuals of the records showing the estimated cost of items entering into a unit price contract if proper demand is made prior to opening of bids, since the statute (section 1196, General Code) clearly shows that the estimated cost must be open to *public* inspection at least three days prior to starting the publication of notice to bidders, the words "public inspection" clearly including contractors and disinterested individuals.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4931.

FEDERAL CREDIT UNION—STOCK EXEMPT FROM OHIO
SECURITIES ACT—FEDERAL CREDIT UNIONS NOT RE-
QUIRED TO OBTAIN OHIO DEALER'S LICENSE.

SYLLABUS:

1. *Stock of Federal Credit Unions sold by such credit unions to their members under the provisions of the Federal Credit Union Act (Title 12, Chapter 14, U. S. Code, Annot.) is, under section 8624-3 of the General Code, exempt from the provisions of sections 8624-8, 8624-9, 8624-10, 8624-13 and 8624-14 of the General Code.*

2. *In selling such stock to their members, Federal Credit Unions are not required, by section 8624-17 of the General Code of Ohio, to obtain a dealer's license.*

COLUMBUS, OHIO, November 23, 1935.

HON. HUGH ADDISON, *Chief, Division of Securities, Department of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"There has recently arisen the question as to whether or not

Federal Credit Unions, organized under an Act of Congress, cited as 'The Federal Credit Union Act' and under the jurisdiction of the Farm Credit Administration must comply with the Ohio Securities Act:

First: Whether the stock sold by these Credit Unions to their members under the provisions of that act are exempt securities under Section 3-1 of O. G. C. 8624.

Second: If the Securities mentioned do fall in the exempt classification of Section 3-1 of O. G. C. 8624, must the Federal Credit Unions obtain a Dealer's License as required by Section 17 of O. G. C. 8624.

An opinion and decision at your earliest convenience will be greatly appreciated."

Federal Credit Unions, organized under the Federal Credit Union Act (Title 12, Chapter 14, U. S. Code, Annot.) are defined in section 1752 of the act, which reads as follows:

"A Federal credit union is hereby defined as a cooperative association organized in accordance with the provisions of this chapter for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes. When used in this chapter the term 'Administration' means Farm Credit Administration, and the term 'Governor' means the Governor thereof."

Section 1753 of the act, which deals with the organization of Federal Credit Unions, reads as follows:

"Any seven or more natural persons who desire to form a Federal credit union shall subscribe before some officer competent to administer oaths an organization certificate in duplicate which shall specifically state—

- (1) The name of the association.
- (2) The location of the proposed Federal Credit Union and the territory in which it will operate.
- (3) The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.
- (4) The par value of the shares, which shall be \$5 each.
- (5) The proposed field of membership, specified in detail.
- (6) The term of the existence of the corporation, which may be perpetual.
- (7) The fact that the certificate is made to enable such persons to avail themselves of the advantages of this chapter.

Such organization certificate may also contain any provisions approved by the Governor for the management of the business of the association and for the conduct of its affairs and relative to the powers of its directors, officers, or stockholders.”

The powers of a Federal Credit Union are enumerated in section 1757 of the act, which reads as follows:

“A Federal credit union shall have succession in its corporate name during its existence and shall have power—

- (1) To make contracts.
- (2) To sue and be sued.
- (3) To adopt and use a common seal and alter the same at pleasure.
- (4) To purchase, hold, and dispose of property necessary and incidental to its operations.
- (5) To make loans with maturities not exceeding two years to its members for provident or productive purposes upon such terms and conditions as this chapter and the by-laws provide and as the credit committee may approve, at rates of interest not exceeding 1 per centum per month on unpaid balances (inclusive of all charges incident to making the loan): PROVIDED, That no loans to a director, officer, or member of a committee shall exceed the amount of his holdings in the Federal credit union as represented by shares thereof. No director, officer, or committee member shall endorse for borrowers. A borrower may repay his loan, prior to maturity, in whole or in part of any business day.
- (6) To receive from its members payments on shares.
- (7) To invest its funds (a) in loans exclusively to members; (b) in obligations of the United States of America, or securities fully guaranteed as to principal and interest thereby.
- (8) To make deposits in national banks and in State banks, trust companies, and mutual savings banks operating in accordance with the laws of the State in which the Federal credit union does business.
- (9) To borrow (from any source) in an aggregate amount not exceeding 50 per centum of its paid-in and unimpaired capital and surplus: PROVIDED, That any Federal credit union may discount with or sell to any Federal intermediate credit bank any eligible obligations up to the amount of its paid-in and unimpaired capital, subject to such rules and regulations as may be prescribed by the Governor.
- (10) To fine members, in accordance with the by-laws, for

failure to meet promptly their obligations to the Federal credit union.

(11) To impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or fines payable by him.

(12) To exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated."

After reading the above sections it becomes manifest that Federal Credit Unions organized under the provisions thereof, are private corporations incorporated for the sole purpose of making loans to members for such purposes and upon such terms and conditions as are provided for by the act, and by the by-laws of each credit union.

With reference to private and public corporations, it is stated in *Ohio Jurisprudence*, Volume 10, page 70, that :

"Private corporations are created for private as distinguished from purely public purposes; corporations are not in the contemplation of law public ones merely because their establishment will promote, either directly or indirectly, the public interest; the distinction has reference to their powers and the purposes of their creation; corporations are public when created for public purposes only, connected with the administration of the government, and where the whole interests and franchises are the exclusive property and domain of the government itself."

That Federal Credit Unions are private corporations is further evidenced by section 1759 of the act, which provides that the membership shall consist of the incorporators and such other persons and organizations as may be elected to membership, and as shall, each, subscribe to at least one share of stock, and by section 1763 of said act, which provides that dividends declared shall be paid on all outstanding paid-up shares.

Section 8624-3, subsection 1, to which you refer in your communication, reads as follows:

"The following securities shall be exempt from the provisions of sections 8, 9, 10, 13 and 14 hereof, and the requirements therein set forth need not be complied with.

(1) Any security issued or guaranteed by the United States; and any security issued or guaranteed by and recognized, at the time of sale, as its valid obligation by any foreign government with which the United States is, at the time of sale, maintaining diplo-

matic relations, or issued or guaranteed, and recognized as its valid obligation, by any political subdivision or governmental or other public body, corporation or agency in or of the United States or in or of such foreign government; provided that such issuer or guarantor has the power of taxation or assessment for the purpose of paying such obligation.

Provided, however, that any security issued or guaranteed by a political subdivision or governmental or other public body, corporation or agency which is not payable out of the proceeds of a general tax may not be sold within this state until there shall be filed, by the issuer thereof or by a licensed dealer, a statement setting forth the nature of the obligation of such security, how payment of the same is secured and that, to the best knowledge of the person filing such statement, there is no default in the payment of any part of the interest or principal of such security and that there are no adjudications or pending suits adversely affecting the validity of the same."

Nowhere in the above subsection is there any provision which would exempt securities issued by a private corporation. However, in regard thereto, your attention is directed to subsection 2 of section 8624-3, which reads:

"The following securities shall be exempt from the provisions of sections 8, 9, 10, 13 and 14 hereof, and the requirements therein set forth need not be complied with.

* * *

(2) Any security issued by and representing an interest in or an obligation of a national bank, or a corporation or governmental agency created by or under the laws of the United States or of the Dominion of Canada, or of a bank incorporated or organized under the laws of any state; provided that such bank, corporation or governmental agency is under the supervision of or subject to regulation by the government or state under whose laws it was incorporated or organized."

It will be noted that under the provisions thereof securities issued by and representing an interest in a corporation created by or under the laws of the United States, if such corporation is under the supervision of or subject to regulation by the Government, are exempt.

In considering your question, it therefore becomes necessary to determine whether Federal Credit Unions are subject to such supervision and regulation. In regard thereto, your attention is directed to section 1756 of the act:

"Federal credit unions shall be under the supervision of the Governor, and shall make such financial reports to him (at least annually) as he may require. Each Federal credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to any person designated by the Governor. The Governor shall fix a scale of examination fees designed, as far as is practicable, so that in each case the fee to be paid shall equal the expense of such examination, which fees shall be assessed against and paid by each Federal credit union promptly after the completion of any such examination: Provided, however, That if a Federal credit union has assets of less than \$25,000 the Governor may accept the audit report of a practicing public accountant in place of such examination and may relieve such Federal credit union of the obligation to pay the examination fee required by this section. Examination fees collected under the provisions of this section shall be deposited to the credit of the special fund created by section 1755 hereof, and shall be available for the purposes specified in said section 1755."

Also, pertinent to the question here under consideration are sections 1766 and 1767, which read as follows:

Section 1766.

"(a) The Governor may prescribe rules and regulations for the administration of this chapter (including, but not by way of limitation, the merger, consolidation, and/or dissolution of corporations organized under this chapter).

(b) The Governor may suspend or revoke the charter of any Federal credit union upon his finding that the organization is bankrupt or insolvent or has violated any provisions of its charter, its by-laws, or of this chapter, or of any regulations issued thereunder.

(c) The governor is hereby authorized and empowered to execute any and all functions and perform any and all duties vested in him hereby, through such persons as he shall designate or employ; and he may delegate to any person or persons, including any institution operating under the general supervision of the Administration, the performance and discharge of any authority, power, or function vested in him by this chapter.

(d) All books and records of Federal credit unions shall be kept and reports shall be made in accordance with forms approved by the Governor."

Section 1767.

“Each Federal credit union organized under this chapter, when requested by the Secretary of the Treasury, shall act as fiscal agent of the United States and shall perform such services as the Secretary of the Treasury may require in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of money by the United States, including the issue, sale, redemption or repurchase of bonds, notes, Treasury certificates of indebtedness, or other obligations of the United States; and to facilitate such purposes the Governor shall furnish to the Secretary of the Treasury from time to time the names and addresses of all Federal credit unions with such other available information concerning them as may be requested by the Secretary of the Treasury. Any Federal credit union organized under this chapter, when designated for that purpose by the Secretary of the Treasury, shall be a depository of public money, except receipts from customs, under such regulations as may be prescribed by the Secretary of the Treasury.”

From the above, it clearly appears that Federal Credit Unions are under the supervision of and are subject to regulation by the Governor of the Farm Credit Administration. The Farm Credit Administration (Title 12, Chapter 17, U. S. Code, Annot.) was substituted for the Federal Farm Board, pursuant to the executive order of the President of the United States, No. 6084, and the name of the office of chairman of the Federal Farm Board was changed by said executive order to Governor of the Farm Credit Administration and under the provisions of said act the Governor of the Farm Credit Administration is vested with all the powers and duties of the Federal Farm Board.

Therefore, Federal Credit Unions, being corporations incorporated under the laws of the United States and under the supervision of and subject to regulation by the United States Government, it would appear that the stock of such corporations sold by them to their members is exempt from the provisions of sections 8624-8, 8624-9, 8624-10, 8624-13 and 8624-14 of the General Code.

I come now to the consideration of your second question.

Section 8624-17, General Code, which provides for the licensing of dealers in securities, reads as follows:

“No person shall sell any securities within this state unless licensed by the division of securities, except:

(1) When the securities are the subject matter of the transactions enumerated in section 4 hereof.

(2) When the person is an issuer (selling securities issued by it or issued by its subsidiary) when (a) such securities are specified under subsections 6 or 8 of section 3 [section 8624-4, General Code] hereof; or (b) such issuer is not a dealer by the express provisions of section 6 hereof." (Words in brackets, the writer's.)

Subsections 6 and 8 of section 8624-4, General Code, referred to in the above section, read as follows:

"The following transactions in securities may be carried on and completed without compliance with the provisions of sections 8, 9, 10, 13 or 14 of this act:

* * *

(6) The giving of any conversion right, subscription right, warrant or option to purchase securities with, or on account of the purchase of, any security which is exempt, or which is the subject matter of an exempt transaction, or which has been registered by description, registered by qualification, or which is the subject matter of a transaction which has been registered by description hereunder.

* * *

(8) The delivery of securities by the issuer thereof, on the exercise of conversion rights, the sale of securities by the issuer thereof, on exercise of subscription rights, warrants or options to purchase securities, the delivery of voting trust certificates for securities deposited under a voting trust agreement, the delivery of deposited securities on surrender of voting trust certificates, the delivery of final certificates on surrender of interim certificates."

It will be noted from the above that the giving of any subscription right or option to purchase any security which is exempt, and the sale of exempt securities by the issuer thereof on the exercise of subscription rights, constitutes a transaction in securities which may be carried on and completed without compliance with the provisions of sections 8, 9, 10, 13 and 14 of the Securities Act.

Again referring to section 1759 of the Federal Credit Union Act, it is seen that all persons and organizations desiring to become members of a Federal Credit Union are required to subscribe to at least one share of stock before being admitted to membership. It would appear, therefore, that the stock sold by a Federal Credit Union to its members is sold on the exercise of subscription rights and such stock being exempt under the provisions of section 8624-3, supra, it accordingly would follow that such sale would fall within the provisions of section 8624-4, supra, and constitute an exempt transaction.

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

1. Stock of Federal Credit Unions sold by such credit unions to their members under the provisions of the Federal Credit Union Act (Title 12, Chapter 14, U. S. Code, Annot.) is, under section 8624-3 of the General Code, exempt from the provisions of sections 8624-8, 8624-9, 8624-10, 8624-13 and 8624-14 of the General Code.

2. In selling such stock to their members, Federal Credit Unions are not required, by section 8624-17 of the General Code of Ohio, to obtain a dealer's license.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4932.

MOTHER'S PENSION—PROCEEDS OF SECTION 2 BONDS OF CAREY ACT MAY NOT BE USED FOR PAYMENT OF MOTHERS' PENSIONS—SECTION 5 BONDS MAY BE USED FOR THAT PURPOSE.

SYLLABUS:

The proceeds of bonds issued under section 2 of House Bill 501 of the 91st General Assembly may not be used for the payment of mothers' pensions authorized under Section 1683-2, et seq., of the General Code, but moneys derived from the sale of bonds issued under section 5 of such act may be used for such purpose.

COLUMBUS, OHIO, November 23, 1935.

HON. HAROLD J. ROSE, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“The county commissioners of this county desire to make an appropriation from the money derived from the sale of bonds under House Bill No. 501 (Carey Act) for such unemployables as those who may be entitled to mothers' pensions, or in other words, to set aside a portion of the money derived from the sale of these bonds to the mothers' pension fund.

I would greatly appreciate an opinion from your office as to whether or not a portion of this money may be appropriated by the commissioners of Athens County to the mothers' pension fund to be administered as provided in the law creating mothers' pensions.