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CONSERVATOR—SUPERINTENDENT OF BANKS MAY AUTHORIZE SALE AND ASSIGNMENT OF SHARES OF STOCK WHEN—PROVIDING BANK AUTHORIZED BY TRUST AGREEMENT TO SELL AND ASSIGN AND ALL PARTIES HAVING INTEREST THEREIN CONSENT THERETO. °

SYLLABUS:

By virtue of Section 710-88a, General Code (H. B. 661, 90th General Assembly) the Superintendent of Banks may authorize the conservator of a state bank possessing trust powers to sell and assign shares of stock in private corporations where the certificates are recorded in the name of the bank without fiduciary designation, although the beneficial interest is in various trust estates, providing the instrument creating the trust authorizes the bank to make such sale and assignment, and providing further that all parties having an interest in the trust consent to such sale and assignment.

COLUMBUS, OHIO, May 19, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I have your letter, which reads as follows:

“A problem common to several banks under conservatorship each possessed of trust powers has arisen in connection with the assignment of certificates of stock of various corporations, which certificates are recorded in the names of the respective banks but which are actually owned by and held in various trust estates and without proper fiduciary designation.

I have been requested to authorize conservators of such banks to assign such certificates of stock in instances where the instrument creating the trust authorizes a sale and/or assignment of stocks so held in trust.

I would appreciate your opinion as to whether or not it is within my power under the provisions of Section 710-88a of the General Code to grant such authority to conservators.”

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

“The term ‘bank’ * * unless the context otherwise requires as used in this act includes commercial banks, savings banks, trust companies and unincorporated banks. * * All banks, including the trust department of any bank, organized and existing under the laws of the United States, shall be subject to inspection, examination and regulation as provided by law.”

It cannot be denied that trust companies and trust departments of banks which administer trust estates, fall within the term “bank” as used in Sections 710-1 et seq. of the General Code. Section 710-88a, enacted as part of the Baker Act (H. B. 661, 90th General Assembly), provides for the appointment of conservators. That section reads in part:

"Whenever the superintendent of banks shall deem it necessary, in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such bank and fix his compensation, may remove him at any time, and may, if he deems it advisable, require of such conservator such bond or security as he deems proper. The conservator so appointed shall take possession of the business and property of such bank and under the supervision of the superintendent and subject to such limitations as the superintendent may from time to time impose, shall have and exercise in the name and on behalf of such bank *all the rights, powers and authority of the officers and directors of such bank* and all voting rights of the shareholders thereof and may continue its business in whole or in part with a view to conserving its business and assets pending further disposition thereof, as provided by law." (Italics the writer's.)

In terms this section places in the conservator all the power and authority of the directors and authorizes him to exercise them on behalf of the bank. You state that the trust instruments authorize the bank as trustee, to sell and assign the corporate shares in question, the beneficial interest in which is in the trust estates but which stand in the name of the bank without fiduciary designation. Since the bank could sell and transfer these shares, it is my opinion that the broad authority granted to the conservator by section 710-88a, General Code, to exercise the powers of the bank in its name and on its behalf includes the authority to sell and assign the shares in question.

It may be strongly contended that those who created the trusts when they named the bank as trustee, did not contemplate that the legislature would substitute a conservator for the bank's directors in the management of the trust, and hence that section 710-88a, General Code, if interpreted to authorize such substitution, is unconstitutional because it impairs the obligation of the contract. If this contention is correct the courts will interpret the statute to avoid the application which renders it invalid. 8 O. Jur. 160.

In view of the serious question thus presented it is my advice that you withhold your authorization until all parties having an interest in the trust shall give their consent to such sale and assignment.

Specifically answering your inquiry it is my opinion that, by virtue of section 710-88a, General Code (H. B. 661, 90th General Assembly) the Superintendent of Banks may authorize the conservator of a state bank possessing trust powers to sell and assign shares of stock in private corporations where the certificates are recorded in the name of the bank without fiduciary designation, although the beneficial interest is in various trust estates, providing the instrument creating the trust authorizes the bank to make such sale and assignment, and providing further that all parties having an interest in the trust consent to such sale and assignment.

Respectfully,
JOHN W. BRICKER,
Attorney General.