

Read alone, this section clearly authorizes a trust of this character, and I can find no other section which limits or qualifies this language.

I am therefore of the opinion that the issuance of the proposed bank stock trustee shares is not in contravention of any of the laws governing the issuance of bank stock and that the trust agreement, by virtue of which such shares are issued, apparently is not illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

801.

SECURITIES—AN INTEREST IN OIL AND GAS LEASES AND MINERAL RIGHTS AND ROYALTIES HELD IN NAME OF TRUSTEES FOR AN ASSOCIATION OF INDIVIDUALS IS A SECURITY WITHIN SECTION 6373-1—SOLICITATION OF SUBSCRIPTIONS TO MEMBERSHIP IN SUCH AN ASSOCIATION IS A SALE OF SECURITIES.

SYLLABUS:

Any instrument evidencing an interest in oil and gas leases and mineral rights and royalties, which property is held in the name of certain designated trustees acting for and on behalf of an association of individuals, is a security within the definition of Section 6373-1 of the General Code of Ohio and the solicitation of subscriptions to membership in such an association is a sale of securities.

COLUMBUS, OHIO, July 28, 1927.

HON. NORMAN E. BECK, *Chief of Division, Division of Securities, Columbus, Ohio.*

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

“I attach hereto agreement to purchase undivided interests in certain oil and gas leases and mineral rights or royalties, which undivided interests are proposed to be disposed of in this state.

Kindly advise whether, in your opinion, these undivided interests would be classed as securities as defined under Section 6373 General Code of Ohio.”

The agreement attached to your communication is as follows:

“Whereas, the undersigned have decided to associate themselves together for the purpose of purchasing certain oil and gas leases on, and one-half of the mineral right or royalty into and under the following described real estate, situated in Caddo county, Oklahoma, and described as follows, to-wit:

<i>Description</i>	<i>Section</i>	<i>Township</i>	<i>Range</i>
SE quarter.....	21	10 N	12 W
SE quarter.....	32	9 N	12 W
SW quarter.....	5	10 N	10 W

<i>Description</i>	<i>Section</i>	<i>Township</i>	<i>Range</i>
NW quarter.....	14	8 N	11 W
NW quarter.....	8	10 N	12 W
NW quarter.....	32	8 N	12 W
N one-half NW quarter.....	23	8 N	12 W
SE quarter.....	8	9 N	12 W

WHEREAS, for the sake of convenience in handling said property and lease hold interests, it has been decided that shall hold said oil and gas leases, and shall hold said mineral rights or royalty, each, as trustee for the undersigned; and

WHEREAS, each of the undersigned has paid the amount set opposite his name for the respective interest also set opposite his name in this Association, which shall be known as the 'Caddo County Syndicate.'

WHEREAS, it is the purpose of this Association to sell said oil and gas leases, or a part thereof, as soon as a satisfactory sale can be made, and also to sell said mineral rights, or part thereof, whenever a majority of the interests hereunto subscribed shall so decree; and

WHEREAS, the total consideration for the purchase of said above described oil and gas leases and mineral rights is Nine Thousand Six Hundred (\$9,600) Dollars; and

NOW, THEREFORE, It is agreed by and between the parties hereto—

(1) That each person has or will pay the amount subscribed opposite his name for the interest indicated as subscribed by him.

(2) That when all of said property has been subscribed for, titles thereto shall be taken as set forth in the second paragraph above, and that in the future management or control of said properties, the trustees shall act only upon authority of a majority of the interests hereto subscribed, which may be granted at any meeting called by the trustees or either of them, at which a majority of the interests subscribed is present in person or by proxy. Said Trustees shall do whatever they may be directed to do at said meeting or meetings for and on behalf of the undersigned subscribers to the Caddo County Syndicate.

(3) Upon the resignation, death or removal of said trustees or their successors a majority of the interests represented at any meeting may elect their successors.

(4) Upon receipt of any funds from the sale of any of the above described property, or any interest therein, said trustee or trustees shall make distribution thereof, within a reasonable time as the interests of the undersigned may appear, after first deducting any and all necessary expenses incident thereto.

(5) Neither said trustees nor their successors shall receive any compensation whatever except their expenses, unless authorized by a majority of the interests represented at any meeting called, as above set forth.

(6) A Secretary to the association or syndicate shall be elected at the first meeting called who shall keep a record of the minutes of said meetings. And no transfer of any interest in this association shall be binding on the trustees or on said association unless the purchaser of said interest shall notify the secretary or trustees in writing before distribution is made of any funds. The secretary and each of said trustees shall have and keep a copy of this agreement.

IN WITNESS WHEREOF, The undersigned have subscribed their names hereto this --- day of -----, A. D., 1927.

* * * * *

You will observe that the agreement just quoted may properly be termed "Articles of Association" of those who propose to purchase certain oil and gas leases and mineral rights and manage them with a view to their disposition at a profit. For the convenience of those so associating themselves, the title to this property is to be held in two trustees. The agreement is analogous to articles of incorporation and subscription to capital stock of an ordinary corporation. The similarity between this association and a corporation is further emphasized by the fact that the trustees, according to paragraph 2, shall act in the future management and control of the properties only upon authority of a majority of the interests granted at a meeting called by the trustees at which the vote of the interests may be registered either in person or by proxy. It should also be noted that the successors of the trustees are to be chosen by election. Also a secretary is provided for, who preserves minutes of the meeting and the interests are only transferred upon notice to the secretary or trustees.

Without any exhaustive analysis, I deem it sufficient to say that the agreement in many respects resembles the articles of incorporation of a corporation and that it effectually creates what may be properly termed "an association."

Section 6373-1, General Code, is as follows:

"Except as otherwise provided in this act (G. C. Sections 6373-1 to 6373-16, 6373-24), no dealer shall, within this state, dispose or offer to dispose of any stock, stock certificates, bonds, debentures, collateral trust certificates or other similar instruments (all hereinafter termed 'securities') evidencing title to or interest in property, issued or executed by any private or quasi-public corporation, co-partnership or association (except corporations not for profit), or by any taxing subdivision of any other state, territory, province or foreign government, without first being licensed so to do as hereinafter provided."

You will observe that this definition is broad enough to apply to any instrument evidencing title to an interest in property issued by an association. While the agreement is silent as to any evidence of the interests involved, I have no doubt but that there will be a form of certificate showing the distributive interest in the association. These evidences of title would apparently come within the terms of the section above quoted.

I feel, however, that even should there be no separate evidence of the interests in question except the signatures upon the agreement and the subsequent notations of transfers by the secretary or trustees, the sale would still be subject to the provisions of the above quoted statute. As I have before stated, the agreement is analogous to a stock subscription and the solicitation of subscriptions thereto is a sale of securities.

My opinion is substantiated by the language used in the third paragraph of the syllabus in the case of *Groby vs. State*, 109 O. S. 543, which is as follows:

"Solicitation of subscriptions for shares or interest in a 'syndicate' or an association, for which a so-called 'membership receipt' is issued to the subscriber stating that he is entitled to a 'pro rata interest in all earnings and profits of the said syndicate,' is a 'sale of securities' of such association, and falls within the regulatory provisions of the statute, whether or not such transaction is preliminary to the organization and incorporation of a company and the issuance of the stock thereof."

This language might well have been applied to the sale of the interests concerning which you inquire.

I am therefore of the opinion that any instrument evidencing an interest in oil and gas leases and mineral rights and royalties, which property is held in the name of certain designated trustees acting for and on behalf of an association of individuals, is a security within the definition of Section 6373-1 of the General Code of Ohio and the solicitation of subscriptions to membership in such an association is a sale of securities.

Respectfully,
EDWARD C. TURNER,
Attorney General.

802.

COUNTY SHERIFF—CANNOT LEGALLY BE APPOINTED DOG WARDEN.

SYLLABUS:

The sheriff of a county can not legally be appointed to the position of dog warden.

COLUMBUS, OHIO, July 28, 1927.

HON. J. E. PATRICK, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“House Bill 164, passed April 21, 1927, provides for the appointment of a dog warden and the establishment of a dog pound by the commissioners.

If in your opinion it can be properly done, our officials would like to appoint the sheriff as dog warden and have the duties performed by his deputies. Will you please advise me whether or not this can be done?”

Prior to the enactment of House Bill No. 164 by the Eighty-seventh General Assembly, Section 5652-7, General Code, provided as follows:

“County sheriffs shall patrol their respective counties, seize and impound on sight all dogs more than three months of age, except dogs kept constantly confined in a registered dog kennel found not wearing valid registration tags. Whenever any person shall make an affidavit before a justice of the peace, mayor or a judge of the municipal court that a dog more than three months of age and not kept constantly confined in a registered dog kennel is not wearing a valid registration tag and is at large, or is kept or harbored in his jurisdiction, such justice of the peace, mayor or a judge of the municipal court shall forthwith order the sheriff of the county to seize and impound such animal. Thereupon such sheriff shall immediately seize and impound such dog so complained of. Such sheriff shall forthwith give notice to the owner of such dog if such owner be known to the sheriff, that such dog has been impounded, and that the same will be sold or destroyed if not redeemed within three days. If the owner of such dog be not known to the sheriff, he shall post a notice in the county court house describing the dog and place where seized and advising the unknown owner that such dog will be sold or destroyed if not redeemed within three days.”