

except taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the 'ten mill limitation' and whenever said term is used in this chapter, or elsewhere in the General Code, it shall be construed to refer to and include both the limitation imposed by this section and the limitation imposed by Article XII, Section 2 of the constitution."

Section 4605 G. C. does not specifically authorize the levy therein provided for to be levied in excess of the ten mill limitation, hence the converse, in the absence of such specific authorization. I must conclude that such levy is within the ten mill limitation.

This identical question was passed on by one of my predecessors in 1929 under the then fifteen mill limitation. It was therein held that the tax levy provided for in Section 4605 G. C. was within the fifteen mill limitation. I refer to Opinion No. 491, Vol. 1, page 731, O. A. G. (1929) in which I concur.

The absence of authorities in this opinion may be explained by the fact that supplemental law that changed the entire legal complexion of the Firemen's Pension Fund, has been in effect about ten and one-half months.

Respectfully,

HERBERT S. DUFFY,
Attorney General

2390.

THE UNIFORM DEPOSITORY ACT—PUBLIC MONEYS MAY NOT BE DEPOSITED IN BUILDING AND LOAN ASSOCIATIONS—SECTIONS 2296-1 ET SEQ. G. C.

SYLLABUS:

Under Sections 2296-1, et seq., General Code, known as "the uniform depository act", public moneys may not be deposited in a building and loan association.

COLUMBUS, OHIO, April 28, 1938.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR: Your communication reads as follows:

"Kindly advise me whether a township trustee, or other official, is permitted to deposit either active or inactive funds in a building and loan association chartered under the State, and carrying insurance of accounts."

Section 2296-1, General Code, reads in part as follows:

"This act shall be known as 'the uniform depository act.'
As used in this act:

(a) 'Public moneys' means all moneys in the treasury of the state, or any subdivisions thereof, or coming lawfully into the possession or custody of the treasurer of state, or of the treasurer of any such subdivision. 'Public moneys of the state' includes all such moneys coming lawfully into the possession of the treasurer of the state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.

(b) 'Subdivision' means any county, school district, municipal corporation (excepting a municipal corporation or a county which has adopted a charter under the provisions of article XVIII or article I of the constitution of Ohio having special provisions respecting the deposit of the public moneys of such municipal corporation or county), township, special taxing or assessment district or other district or local authority electing or appointing a treasurer in this state. In the case of a school district, special taxing or assessment district or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by or pursuant to law to act as such ex-officio treasurer, the subdivision for which such a treasurer has been primarily elected or appointed shall be considered to be the 'subdivision' for all the purposes of this act.

(c) 'Public deposit' means public moneys deposited in a public depository pursuant to the provisions of this act.

(d) 'Public depository' means an institution which receives or holds any public deposits.

(e) 'Active deposit' means a public deposit payable or withdrawable, in whole or in part, on demand.

(f) 'Inactive deposit' means a deposit which is not payable on demand."

From the language used in sub-head (b) of the above quoted section, township funds are specifically made "public moneys", and are subject to the laws regulating same, and can only be deposited in a public depository as defined by law.

Section 2296-4, General Code, reads in part as follows:

“Any national bank located in this state, and any ‘bank’ as defined by Section 710-2 of the General Code, subject to inspection by the division of banks, department of commerce, of this state, and any title guaranty and trust company subject to inspection by the auditor of state pursuant to Section 710-171 of the General Code shall be eligible to become a public depository, subject to the provisions of this act.”

The above quoted section specifically defines what institutions can be public depositories and does not mention building and loan associations by name.

Sections 710-171, General Code, reads as follows:

“Title guaranty and trust companies shall make such reports to the auditor of state as are required to be made by trust companies to the superintendent of banks, and shall be subject to like examination, penalties and fees; such examination to be made by and such fees and penalties assessed by and paid to the auditor of state. * * * ”

Title guaranty and trust companies are distinct from building and loan associations. Section 710-169, General Code, requires that when a title guaranty and trust company has been granted banking powers it shall make reports and be subject to inspection by the Superintendent of Banks. These reports are made in addition to the reports required to be made to the Auditor of State under Section 710-171.

Section 154-39a, General Code, creates a division of building and loan associations in the department of commerce, and Section 154-6, General Code, creates the position of Superintendent of Building and Loan Associations.

Section 695, General Code, provides that the superintendent of building and loan associations shall make an annual report of his department to the Governor.

Section 9643, General Code, says in substance that a building and loan association is a corporation for the purpose of raising money to be loaned to its members and others.

Section 682, General Code, provides that building and loan associations shall make semi-annual reports to the Superintendent of Building and Loan Associations.

Section 9643-1, General Code, provides that the Secretary of State shall not issue a charter to a building and loan association until the application for said charter has been approved by the Superintendent of Building and Loan Associations.

All of the above lead to the conclusion that building and loan associations do not have to make reports to the Auditor of State, as provided in Section 710-171, and are thus distinct from guaranty title and trust companies.

We are therefore confronted with the proposition as to whether or not a building and loan association comes under the definition of "bank" as defined by Section 710-2, General Code, which 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, and unless the context otherwise requires as used in this act includes commercial banks, savings banks, trust companies, special plan banks, 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."

The wording of this statute specifically excepts and excludes building and loan associations from coming under the definition of the term "bank."

Therefore, in specific answer to your inquiry, I am of the opinion that a township trustee or other official is not permitted to deposit either active or inactive funds of the township in a building and loan association chartered under the laws of this state.

Respectfully,

HERBERT S. DUFFY,

Attorney General