

4330.

BANK—NATIONAL BANKING ASSOCIATION—MAY NOT ACT AS
REGISTRAR OF STOCKS AND BONDS WITHOUT COMPLYING
WITH SECTION 710-150, G. C.

SYLLABUS:

Neither a national banking association doing business in this state nor a bank organized under the laws of the State of Ohio, may act as registrar of either stocks or bonds of a general corporation, without first complying with the provisions of Section 710-150, General Code.

COLUMBUS, OHIO, May 17, 1932.

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

DEAR SIR:—I am in receipt of your request for opinion as follows:

“Will you kindly render the undersigned your opinion as to whether or not either a national banking association doing business in this state, or a bank organized under the laws of the State of Ohio, may act as Registrar of either stocks or bonds of a general corporation, without complying with the provisions of Section 710-150 of the General Code of Ohio?”

The powers of a banking corporation are like those of other corporations, either express powers—those expressly granted by statute or the charter creating them; incidental powers—those which, although not specifically granted, are necessarily to be inferred from the language of the grant; or implied powers—those reasonably necessary for carrying out such express powers. The express powers of a corporation are those which are expressly granted in the charter or articles of incorporation of a corporation and such as are contained in the statutes with reference to the particular corporation in question. Banking corporations are incorporated under a specific act usually referred to as the Banking Act. Section 710-2, General Code, contained in such Act, defines a bank 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 requires as used in this act includes commercial banks, savings banks, trust companies and unincorporated banks; * * *”

Such Act grants to a bank certain specific powers. Section 710-47, General Code, grants to banks general corporate powers, that is, the power to adopt, use and alter a corporate seal, to contract and be contracted with, to sue and be sued, to adopt regulations for the government of such corporation and the power to do such needful acts as will enable it to perform the purposes for which it was created.

Section 710-5, General Code, grants to banks the authority to become a member of the Federal Reserve system.

Sections 710-59 and 710-60, General Code, authorize it to increase and decrease its capital stock.

Section 710-86, General Code, authorizes it to consolidate with other banks. Section 710-108, General Code, authorizes banks to purchase, lease, hold and convey certain real estate.

Section 710-109, General Code, authorizes banks to engage in the safety deposit vault business.

Section 710-111, General Code authorizes it to make certain investigations.

Section 710-112, General Code, authorizes banks to make loans on certain real estate, but there is no express authority authorizing any bank, with the exception of trust companies, to act as a registrar of stocks or bonds.

Section 710-158, General Code, grants express powers to trust companies but makes no mention of the grant of such power to either commercial or savings banks. Such section reads as follows:

"A trust company may act as agent or trustee for the purpose of registering, counter-signing or transferring the certificates of stock, bonds, or other evidences of indebtedness of a corporation, association, municipality, state or public authority, upon such terms as may be agreed upon, and act as trustee under any mortgage or deed of trust to secure bonds issued by any corporation, association, municipality or body politic, and may accept and execute any other corporate or municipal trusts not inconsistent with the laws of the state."

It is therefore evident that banks, other than trust companies, have no express power to engage in the business of registrar of stocks and bonds.

As stated above, a banking corporation has certain incidental powers; that is, powers which are necessarily inferred from the language of its charter or of the statutes under which it was created. If a bank has the incidental power to act as registrar it must arise from the nature of the duties of a registrar of stocks and bonds. Such duties consist chiefly of the insertion in the register of the name of the new owner of a bond or share of stock in lieu of the former owner, if any, and the preservation of such register for the examination thereof by such persons as may be entitled by law to examine the same. The registration of bonds is usually optional with the bond-holder. Such bonds are ordinarily payable to bearer unless registered. There is usually a provision in such bonds which states that when they become registered the title thereto shall no longer pass by delivery but by assignment on the bond, which assignment shall be duly entered upon the register of such bonds.

The purpose of a register of stocks is set forth in the corporation act (Section 8623-63, General Code) in which section a corporation is required to keep a list of the names and addresses of its stockholders for the evident purpose of notification in the event that dividends are declared and for the purpose of receiving notices of corporate action and such other notices as may be required by law. It is evident, from these purposes and from the definition of a bank, as contained in Section 710-2, *supra*, that such duties are not incidental to the banking business.

A banking corporation has also implied powers which are defined in syllabus No. 1, of the case of *Gas & Fuel Company vs. Dairy Company*, 60 O. S., 96, which reads as follows:

"The implied powers which a corporation has in order to carry into effect those expressly granted and accomplish the purposes of its creation, are not limited to such as are indispensable for these purposes.

but comprise all that are necessary in the sense of appropriate, convenient and suitable including the right of reasonable choice of means to be employed."

It would therefore follow that a bank would have the power to act as registrar of stocks and bonds only when such duties were necessary or appropriate to enable the bank to carry on the business of banking. The business of banking has changed decidedly since banks first came into existence. Originally the term "bank" applied only to those banks which exercised the function of issuing paper money. See *Exchange Bank vs. Hines*, 3 O. S., 1. However, this privilege of issuing money formerly granted to banks is no longer viewed as necessary to the banking business since the right to issue circulating bank notes has long since ceased to exist and has been reserved to the Federal Reserve Banks by the imposition of a prohibitive Federal tax on the issuance of such notes. See *Ruling Case Law*, Vol. 1, page 422; *United States Code*, Title 12, Section 563. A "bank" as the term is used in modern business, is defined in 3, *Ohio Jurisprudence*, Section 4, Title "Banks."

"Banking, in its more enlarged signification, indicates the business of receiving deposits, loaning money, dealing in coin and commercial paper, making collections, etc., as well as issuing money for circulation."

It is therefore apparent that in order that a bank may have the implied power to engage in the business of registrar of stocks or bonds, such a business must be engaged in by reason of the fact that it is reasonably necessary to the carrying out and performing of some express power granted to a banking corporation by statute.

It is to be observed that the legislature has specifically granted to trust companies in the enumeration of the express powers the right to act as registrar of stocks and bonds. (Section 710-158, General Code.)

It is significant that the legislature has granted this express power to no other type of bank although the Banking Act (Sections 710-1 to 710-189, General Code) authorizes the creation of savings banks, commercial banks and trust companies and includes all three types of banks within the definition of "bank" (Section 710-2, *supra*). It is a rule of statutory construction that where in the same act the legislature specifically grants certain powers to certain individuals therein enumerated, the intent of the legislature is to exclude such grant of power from all other persons to whom it is not expressly granted. That is, it is not presumed that the legislature in the same act, intended to specifically grant an enumerated power to one of a class of banks concerning which it is legislating and while not expressly granting it to the other types of banks in that act, to impliedly grant such power to other types of banks.

While it might be reasonably convenient for a bank to act as registrar of stocks and bonds, I am unable to find any decision or ruling of the courts holding that a bank has the implied power to act as such registrar, and taking into consideration the fact that banks, from their very nature, exercise a highly confidential and specialized business with reference to the property of individuals and corporations, it is not to be presumed that the legislature intended to permit such types of corporations to engage in other distinct types of business than those specified in the act.

An examination of the National Banking Act discloses that an analogous

situation exists in the case of a national banking association, that is, the legislature has granted to such type of business no express power to act as registrar of stocks and bonds nor does such act contain any language from which a grant of such power can reasonably be inferred.

It is therefore my opinion that neither a national banking association doing business in this state, nor a bank organized under the laws of the State of Ohio may act as registrar of either stocks or bonds of a general corporation without first complying with the provisions of Section 710-150, General Code, and amending their charters to include trust capacities.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4331.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE GRAYBAR ELECTRIC COMPANY, INC., OF NEW YORK CITY AND COLUMBUS, OHIO, FOR RADIO BROADCAST TRANSMITTER FOR BROADCASTING STATION WEOA, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$13,300.00—SURETY BOND EXECUTED BY THE NEW YORK CASUALTY COMPANY OF NEW YORK CITY.

COLUMBUS, OHIO, May 17, 1932.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works for the Board of Trustees of the Ohio State University, and the Graybar Electric Company, Inc., of New York City, N. Y. and Columbus, Ohio. This contract covers the furnishing of a 1,000 watt Radio Broadcast Transmitter for Broadcasting Station WEOA at Ohio State University, Columbus, Ohio, in accordance with the form of proposal dated April 12, 1932. Said contract calls for an expenditure of thirteen thousand three hundred dollars (\$13,300.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence that the Controlling Board and Emergency Board have released monies appropriated for this contract by House Bill No. 624 of the 89th General Assembly, in accordance with section 8 of said bill.

In addition you have submitted a contract bond, upon which the New York Casualty Company of New York City, N. Y., appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

A certificate of the Secretary of State shows that the above contracting foreign corporation is authorized to do business in Ohio.