Code, prior to its amendment in House Bill No. 4, enacted in the special session of the 90th General Assembly, which read in part as follows:

> "The following penalties are hereby provided: A penalty of fifteen percent (15%) of the amount of the tax shall be assessed by the auditor of state for failure to pay the tax at the time required by law. A penalty of fifteen percent (15%) of the amount of the tax shall be assessed by the commission for failure to file a return as required by law. A penalty of twenty-five percent (25%) of the amount of the tax shall be assessed by the commission for the filing of a false or fraudulent return."

By virtue of the provisions contained in section 6212-60, prior to its amendment, the Ohio Liquor Control Commission was only authorized to impose a penalty upon a permittee for failure to file a return with the Commission as required by law. There is no provision in the laws relating to the Ohio Liquor Control Commission which authorizes that administrative body to remit a penalty imposed by it upon a permittee who has failed to file a return as required by law.

In view of that fact, it is my opinion that the Ohio Liquor Control Commission does not have the power to remit a penalty imposed by it upon a class A permittee for failure to file a return with the Ohio Liquor Control Commission as required by law prior to the enactment of House Bill No. 4, enacted in the special session of the 90th General Assembly.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1753.

OHIO SAVINGS BANK AND TRUST COMPANY—LEGAL QUESTIONS RELATIVE TO PROPOSED CONDITIONS FOR RESUMPTION OF BUSINESS OF TOLEDO BANK DISCUSSED.

SYLLABUS:

1. *Consents heretofore obtained to the Plan for Reopening of The Ohio Savings Bank & Trust Company, Toledo, Ohio, may not be considered as consents to the proposed Conditions for Resumption of Business by said bank, in view of the material variations from the original Plan contained in said Conditions.*

2. *The Court of Common Pleas may not cancel all outstanding certificates evidencing ownership of stock in said bank without the consent of the owners thereof, as contemplated by the proposed Conditions.*

3. *Under Section 5 of the Conditions, value must be received for all of the authorized capital stock before the Superintendent of Banks can legally consent to the reopening of said bank.*

4. *An agreement among the shareholders, a committee and the bank in connection with the opening of a bank that all shares shall be voted by such committee is a lawful agreement.*

5. *Even though the Conditions for the resumption of business by the Ohio Savings Bank & Trust Company are approved by the Superintendent of Banks and the Common Pleas Court, such creditors who desire to file an action for the estab-*

lishment of alleged preferences may not be compelled to bring such action against the bank as trustee, as set forth in Section 8 of said Conditions, but may bring such action against the bank.

6. *Approval of said Conditions as required by law will not free the reopened bank from liability in the manner provided by Section 9 of the Conditions.*

7. *Publication of notice of the proposed resumption of business of a bank, which has been in liquidation, and mailing of the same must be done by the bank or its reorganization committee rather than by the Superintendent of Banks.*

8. *The Superintendent of Banks may not collect individual liability assessed against stockholders of a bank which remains unpaid at the time of the resumption of business, where he has relinquished possession of all of the assets and property of such bank.*

9. *Since under section 710-89a the conditions under which a bank in the process of liquidation may resume business are subject to the approval of the Common Pleas Court after the consent of the Superintendent of Banks has been obtained, it would be improper for the Attorney General to formally approve or disapprove such proposed plan.*

COLUMBUS, OHIO, October 21, 1933.

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

DEAR SIR:—You have recently submitted for my consideration a document entitled "Conditions for Resumption of Business by The Ohio Savings Bank & Trust Company," this bank, located in Toledo, Ohio, now being in the process of liquidation. In 1932 a Plan for the reopening of this bank was submitted for your approval and at your request my predecessor rendered an opinion on the legality of such Plan, the same being Opinion 4702, Opinions of the Attorney General for 1932. You now present for my consideration a number of questions on the legality of various phases of the proposed Conditions for the resumption of business.

You first inquire whether consents obtained from creditors and stockholders to the "Plan" for reopening may be considered as consents to the proposed "Conditions for Resumption of Business," in view of the many departures from the original plan found in the Conditions. For purposes of convenience, the Plan for Reopening will hereafter be referred to as "the Plan" and the Conditions for the Resumption of Business as "the Conditions."

The Plan provided that the capital stock of the old bank should be reduced from $3,000,000.00 par value (30,000 shares at $100.00 per share) to $50,000.00 par value. Prior to the re-opening this was to be increased to provide for stockholders who should pay their liability in full. Under the Plan the surplus and undivided profits in the aggregate "shall be equal to the par amount of all of the then outstanding stock in the bank." Under the Conditions the par value is to be reduced from $100.00 per share to $40.00 per share, and on the date the bank resumes business it is to have capital funds of $1,200,000.00 capital, $1,000,000.00 surplus and $300,000.00 reserve.

Under Section 2 of the Plan, consenting shareholders were to retain stock of the par value of one-sixth the par amount of the stock previously owned by them. In the agreements attached to the Plan, that marked "Exhibit A" for stockholders residing in Ohio, and that marked "Exhibit B" for non-resident stockholders, the following language appears:

"(c) The undersigned expressly consents and agrees to the reduction of the par value of his stock to one-sixth (1/6) of the present par value thereof, * * *"

The following appears in Section 2 of the Conditions:

"The stock certificates heretofore representing the stock shall not be evidence of any interest in the assets of the reopened Bank or of any rights as a stockholder thereof, and the same shall be canceled by order of the court approving these Conditions and the Bank shall be recapitalized as herein provided."

Section 5 of the Conditions refers to ownership of stock in the bank. Under this section each non-objecting depositor and creditor, by filing a written declaration, becomes entitled to a pro rata share of the stock with which the bank is to begin business in the proportion which his claim bears to the claims of other creditors. Such creditors are to receive certificates of a beneficial interest in the stock, which is to be held for three years by the bank as trustee, the voting rights during that period being vested in a committee. That section further provides:

"The beneficial interest in all of the stock with which the Bank is to resume business not claimed by persons asserting claims as depositors or creditors as hereinbefore provided, shall become and be the property of the stockholders of the Bank who shall have, by such date as the court may fix, filed with the court in writing their respective written declarations that they desire to become the owners of stock of the Bank with which it is to resume business in accordance with the terms hereof, provided such stockholders by said date shall have surrendered their old stock certificates for cancellation. Each such stockholder shall be entitled to receive a proportion of said stock available to be taken by former stockholders equal to the proportion which the par amount of the old stock standing in his name is of $3,000,000.00. The certificates for such stock shall be issued in the name of the Bank as Trustee, and the Bank as Trustee shall issue certificates of beneficial interest therein to the stockholders respectively who are entitled to the same as herein provided and who have paid their double liability on their old stock in full."

This stock is to be held by the bank as trustee for a period of three years. A further provision is found at page 5 of the Conditions, as follows:

"Stockholders who shall fail to file their written election to receive stock or shall fail to surrender their old stock certificates for cancellation as herein provided by the date fixed by the court shall not be entitled to any beneficial interest in any of said new stock of the Bank."

It thus appears that whereas consenting stockholders under the Plan were to retain stock of a par value of one-sixth the par value of their old stock, under the Conditions they are to receive only a proportion of the stock not claimed by those asserting claims as depositors and creditors. Since it is impossible to forecast the amount of stock that will be taken by creditors, I am unable to say what interest the old stockholders may be able to acquire under the Conditions. It is certain, however, that it will not be the same interest which they would have

acquired under the provision of the Plan expressly included in the written consent which they signed.

Section 3 of the Plan, concerning unrestricted deposits, provided for the release of not less than fifteen per cent nor more than twenty per cent of the deposits and/or claims. Under Section 3 of the Conditions, non-objecting depositors and other creditors are to receive in cash not less than three per cent and not over five per cent of the original face amount of their respective allowed claims. While the total dividends of 25% paid in the interim may result in substantially the same total payments to depositors under both the Plan and the Conditions, nevertheless it is apparent that in the matter of cash payments to depositors the Conditions substitute a new provision for that in the Plan to which the shareholders and depositors consented.

There appears to be a material variation in the amount and character of property to be placed in the trust in which creditors and depositors are to receive participation certificates under Section 13 of the Conditions, from that prescribed by Section 11 of the Plan.

In addition to demand deposits and trust certificates, a depositor was entitled under the Plan to a restricted savings deposit. Section 6. This deposit was to consist of such a percentage of his claim as the Superintendent of Banks should determine. The consents to the Plan signed by the depositors expressly provided for these restricted savings deposits. Exhibit D, Section 1(b). The depositor agreed that "he will accept" (a) an unrestricted deposit, (b) a restricted deposit and (c) trust certificates. I find no provision in the Conditions for such restricted deposits. Section 5 of the written consents signed by depositors, attached to the Plan as Exhibit D, provided:

> "That the undersigned hereby consents to all of the provisions of said 'Plan for Re-opening of The Ohio Savings Bank and Trust Company,' and agrees to be bound thereby and by such changes as may be made therein by said Depositors' Committee (as now or hereafter constituted) of The Ohio Savings Bank and Trust Company by and with the consent of the Superintendent of Banks, provided that no changes shall be made therein which shall release any of the present stockholders of said The Ohio Savings Bank & Trust Company from their stockholders' liability with respect to the now existing claims of depositors and creditors of said Bank, and that no change shall be made therein which will decrease the amount of Unrestricted Deposit to be given the undersigned below the minimum of 15% of his claim fixed by said Plan, and this consent is conditional upon at least $1,000,000.00 in cash being actually paid in to said Bank by the stockholders on account of their double liability prior to the opening of the Bank in pursuance of said Plan."

Since this language was drawn by the reorganization committee, in the event of ambiguity it must be construed in favor of the depositors. *Olmstead & Company* vs. *Metropolitan Life Insurance Company,* 118 O. S., 421; *Coe* vs. *Suburban Light and Power Company,* 32 O. A. 158. Under Section 5 of the consent, a depositor does not agree to every change except those changes regarding which he expressly withholds consent, viz., release of stockholders from liability and decrease in amount of unrestricted deposit below fifteen per cent. Those were excepted from his consent out of abundant caution. By signing this instrument the depositor did not consent to any other change which the depositors' com-

mittee might choose to make. If it were otherwise, a consenting stockholder would have been deemed to have consented to a Plan entirely new except as to the release of stockholders from liability and the amount of unrestricted deposits. Since in Section 1 of the consent the depositor agreed to accept in place of his claim an unrestricted deposit, a restricted deposit and trust certificates, I cannot say that by the language of Section 5 he has agreed to a Plan which does not provide for a restricted savings deposit, even though under such Plan he may receive a demand deposit of an amount slightly greater than under the old Plan. It may be contended that under Section 1, while a depositor agreed to accept an unrestricted deposit, a savings deposit and trust certificates, he did not agree to accept all of these and nothing of a different character. I am of the view that in signing the consent the depositor believed that he would receive two types of deposits and trust certificates as stated therein. Under the principle of construction above discussed, I do not believe that he can be deemed to have consented to accept only an unrestricted deposit and trust certificates.

There are certain new provisions found in the Conditions that did not appear in the Plan. Thus Section 8 of the Conditions provides that all non-objecting depositors and creditors whose claims have been allowed as general claims but not as preferred claims, may leave their depositor's trust certificates in escrow with the bank as trustee, and may then maintain an action against the bank, as trustee, for a determination of their right to a preference. The Section provides that those who have not filed an action against the Superintendent of Banks to establish a preference may file such action against the bank as trustee within three months from the entry of the order of court approving the Conditions.

Section 9 provides that the bank, as trustee, shall be substituted as defendant for the Superintendent of Banks in pending actions to establish a preference.

Viewed as a whole, it appears that the Conditions constitute a new plan for the reopening of the bank, and while this instrument contains many provisions similar to those embodied in the Plan, it likewise contains many variations, some of which have been discussed above. Such being the case, I am of the view that consents of stockholders and of depositors and other creditors heretofore obtained to the Plan for reopening may not be considered as consents to the Conditions for the resumption of business.

You next inquire whether the Court of Common Pleas can cancel all stock certificates without the consent of the owners, regardless of whether individual liability heretofore assessed has been collected. That portion of Section 2 of the Conditions quoted above provides for cancellation of all old stock by the court. The certificates representing such stock are not to represent any interest in the reopened bank. Under Section 2 of the Plan consenting stockholders were to retain stock of the par value equal to one-sixth of the par amount of their old stock. Those who should pay part or all of their double liability prior to the reopening were to receive shares of a par value equal to one-half the double liability actually paid in. I am of the view that unless the stockholders consent, the court cannot cancel old stock in the manner provided in Section 2 of the Conditions and deprive stockholders of an interest which they would have had under the Plan. Particularly is this the only reasonable view as applied to stockholders who have paid their double liability so as to be entitled to stock under the Plan. The old stockholders have a property right which cannot be divested in the manner provided in Section 2 of the Conditions.

You next inquire whether in case those entitled to certificates of beneficial interest in stock held by the bank as trustee do not accept such certificates, it will

be necessary to sell them at public sale prior to the reopening of the bank. Section 5 of the Conditions provides that depositors may obtain stock by using allowed claims against the bank. It further provides that stockholders who have paid their double liability in full may acquire a proportion of the stock not taken by creditors, such interest being evidenced by certificates of beneficial interest. That section then provides:

> * * "If any stockholder or stockholders shall fail to file their written declaration that they desire to become owners of such reissued stock, or shall fail to surrender their old stock certificates respectively within such time as shall be fixed by the court, their pro rata share of said stock shall be sold at public sale and a certificate of beneficial interest therefor shall be issued to the purchaser thereof at such sale. The proceeds of such sale shall be paid into the Trust hereinafter provided for." * *

Section 710-55 of the General Code reads:

> "When a certificate is transmitted to the superintendent of banks, signed by the president, secretary or treasurer of such corporation, notifying him that the entire capital stock and surplus of such corporation is subscribed, and paid in, and that such corporation has complied with all the provisions of law required to be done before it can be authorized to commence business, the superintendent of banks shall examine into its affairs, ascertain especially the amount of money paid in on account of its capital and surplus, the name and place of residence of each director, the amount of capital stock of which each is the owner in good faith, and whether such corporation has complied with all provisions of law required to entitle it to engage in business."

Section 710-56 of the General Code provides:

> "If upon such examination of the facts referred to in section 55, and of any other facts which may come to the knowledge of the superintendent of banks, he finds that such corporation is lawfully entitled to commence business, he shall give it a certificate under his hand and official seal that it has complied with all the provisions required by law and is authorized to commence business."

It is clear from these provisions of the statute that in order for a bank to begin business, the entire capital stock must be subscribed and *paid in.*

Section 710-30 provides that every bank the capital of which shall become impaired by losses or otherwise, shall cause the deficiency to be paid in cash by assessment upon the stockholders within three months after receiving notice from the Superintendent of Banks. Failure to make up such impairment gives the Superintendent of Banks the right to forthwith take possession of the business and property of the bank for liquidation.

These sections contemplate that the capital of a going bank shall have been paid in. I am of the opinion that Section 710-89a, which provides that a bank in liquidation may, with the consent of the Superintendent of Banks, resume

business upon such conditions as may be approved by the Court of Common Pleas, does not authorize the reopening of a bank, the capital of which will be impaired at the time it reopens.

Under Section 5 of the Conditions, creditors who acquire certificates of beneficial interest at or prior to the time of reopening, by relinquishing allowed claims, and stockholders who acquire certificates for new stock by payment of their double liability, give value at the time they acquire such certificates. However, the Conditions provide for issuing certificates to creditors whose claims have not been allowed at the time the bank opens and to stockholders who have not paid their double liability. While there is a provision that such stock be sold if payment is not made, i. e., if the creditors' claims are not allowed in the one case, or if the stockholders fail to pay their liability in the other, nevertheless no value will be given at the time the bank reopens. I am of the opinion that should the bank reopen under those circumstances, its capital would at that time be impaired. It follows, in my opinion, that you cannot consent to the reopening until value has been received for all of the authorized capital stock.

You next inquire, whether the court may, in approving the Conditions, thereby constitute the executive committee of the depositors committee, or a majority thereof, a proxy to vote stock as provided in Section 5. Under Section 5 of the Conditions, for three years the bank, as trustee, will be the record holder of the shares for which certificates of beneficial interest have been issued. Each shareholder of record is entitled to vote. Section 8623-50, General Code. 10 Ohio Jurisprudence, 515.

Section 5 of the Conditions provides:

> "The voting power of said stock while the same is held in trust as aforesaid, shall be vested in the Executive Committee of the Depositors' Committee hereinbefore mentioned as the same shall be from time to time constituted. These Conditions and the order of the court approving the same shall constitute and be a sufficient proxy in favor of the Executive Committee of the Depositors' Committee, or a majority thereof, to vote said stock in accordance with the provisions of these Conditions and for the term herein provided for. All stock certificates and/or certificates of beneficial interest shall during the period said voting rights are held by said Executive Committee bear a statement to the effect that the voting rights of such stock are so held."

Section 8623-53, General Code (Amended, S. B. 26, 90th General Assembly), provides the manner of appointment of a proxy. This section provides that a shareholder may vote by proxy "appointed by a writing signed by such shareholder." The section then defines what is a sufficient writing and further provides that no proxy shall be valid after the expiration of eleven months after it is made, unless the writing specifies the date upon which it is to expire. The provision of the Conditions in question does not provide that the shareholders shall sign an instrument in writing appointing a proxy. If this provision restricting voting power depends for its validity upon the creation of proxies, it is clear that it must fail, since it does not comply with the statutes.

A corporation in issuing stock may stipulate therein that particular classes of stockholders shall have no voting rights. *Miller* vs. *Ratterman,* 47 O. S., 141. Thus preferred stockholders who otherwise would have the right to vote, are often denied this right, the granting or withholding thereof being a matter of contract between the corporation and its shareholders. See *Allen* vs. *Pontius,* 15 O. A. 251;

affirmed 104 O. S., 436. Similarly, in issuing a class of stock, a corporation may provide that the holders thereof shall exercise voting rights only on the happening of certain contingencies. *Krell* vs. *Krell Piano Co.,* 23 N. P. (n. s.) 193; affirmed 14 O. A., 74.

If in issuing the stock of the reopened bank under the Conditions, it is provided in the certificates that the executive committee of the depositors' committee is to have the voting rights while the stock is held in trust, I am of the view that such restriction will be lawfully imposed. Strictly speaking, this is not a proxy. It is an agreement among the owners of the stock, consented to by the corporation.

You next inquire whether upon approval of the Conditions by the Superintendent of Banks and the Common Pleas Court, such creditors who desire to file an action to establish alleged preferences, may be compelled to bring such action against the bank as trustee, as set forth in Section 8, rather than against the bank. Section 8 provides that "non-objecting" creditors having claims allowed as general claims, but not as preferred claims, may leave their depositors' trust certificates in escrow with the trust department of the bank, "and upon so doing may maintain an action against the Bank as Trustee of the Trust hereinafter provided for" to establish their claims as preferred. Under Section 3 of the Conditions, non-objecting creditors are defined as those who shall not file written objections to the resumption of business. Unless depositors and other creditors agree upon sufficient consideration to discharge the bank, I am of the view that an action may be brought against the bank. The provision in Section 8, by which the depositor shall be deemed to accept the offer to discharge the bank and consent to proceed only against the bank as trustee, is void. 1 Page on Contracts, p. 239, contains the following statement:

> "Even if the party making the offer prescribes that a failure to answer shall be regarded as an acceptance, such failure does not amount to an acceptance."

Your next question is whether the approval of the Conditions, as required by law, will free the reopened bank from liability, as is attempted under Section 9. That section provides that the bank, as trustee, shall be substituted for the Superintendent of Banks as defendant in pending suits wherein non-objecting depositors and other creditors are seeking a preference. That section further provides:

> "In any suits filed against the Bank as Trustee of said Trust for the establishment either of general claims or of alleged preferred claims by non-objecting depositors or creditors as hereinbefore provided, the rights of the parties shall be determined in all respects as though the suit were against the Superintendent of Banks and the Bank had not resumed business. The Bank and the Bank Assets Proper shall be free from any and all liability to any such preferred creditors except the obligation hereinbefore set forth to provide a demand deposit for all non-objecting creditors and depositors having claims allowed as general claims prior to the resumption of business by the Bank, and shall be held harmless therefrom by the Bank as Trustee of said Trust."

It follows from my answer to the preceding question that in my opinion the reopened bank cannot be freed from liability in the manner herein provided.

As mentioned in your letter, this office has heretofore advocated that the publication of notice of proposed resumption of business and mailing thereof be done by the bank or the reorganization committee. I am of the view that this practice should be followed rather than that prescribed in Section 10 of the Conditions, viz., that the acts in question should be done by the Superintendent of Banks.

You next call my attention to the fact that under the Conditions the Trust Department of the bank will liquidate those assets which are not taken into the reopened institution. Your precise question is whether, not having taken possession of such assets, you may collect the individual liability from such stockholders who have not paid prior to the reopening. Your authority to collect stockholders' individual liability is derived from Section 710-95 of the General Code. As is true of other public officers, you have only those powers and duties prescribed by statute, together with such implied powers as may be necessary to carry out those expressly granted. I find nothing in the statute which authorizes you to proceed with liability collections after you have relinquished all of the assets of the bank. I am therefore of the opinion that your last question must be answered in the negative.

In view of the foregoing, it is my opinion that:

1. Consents heretofore obtained to the Plan for Reopening of The Ohio Savings Bank & Trust Company, Toledo, Ohio, may not be considered as consents to the proposed Conditions for Resumption of Business by said bank, in view of the material variations from the original Plan contained in said Conditions.

2. The Court of Common Pleas may not cancel all outstanding certificates evidencing ownership of stock in said bank without the consent of the owners thereof, as contemplated by the proposed Conditions.

3. Under Section 5 of the Conditions, value must be received for all of the authorized capital stock before the Superintendent of Banks can legally consent to the reopening of said bank.

4. An agreement among the shareholders, a committee and the bank in connection with the opening of a bank, that all shares shall be voted by such committee, is a lawful agreement.

5. Even though the Conditions for the resumption of business by the Ohio Savings Bank & Trust Company are approved by the Superintendent of Banks and the Common Pleas Court, such creditors who desire to file an action for the establishment of alleged preferences may not be compelled to bring such action against the bank as trustee, as set forth in Section 8 of said Conditions, but may bring such action against the bank.

6. Approval of said Conditions as required by law will not free the reopened bank from liability in the manner provided by Section 9 of the Conditions.

7. Publication of notice of the proposed resumption of business of a bank, which has been in liquidation, and mailing of the same must be done by the bank or its reorganization committee rather than by the Superintendent of Banks.

8. The Superintendent of Banks may not collect individual liability assessed against stockholders of a bank which remains unpaid at the time of the resumption of business, where he has relinquished possession of all of the assets and property of such bank.

Section 710-89a of the General Code of Ohio, relating to the resumption of business by a bank whose business and property is in the possession of the Superintendent of Banks for the purpose of liquidation, provides in part:

"Such bank may with the consent of the Superintendent of Banks, resume business upon such conditions as may be approved by the Court of Common Pleas in and for the county in which such bank is located. * * * "

From this provision of the statute, it is apparent that the conditions under which a bank in the process of liquidation may resume business are subject to the approval of the Common Pleas Court of the proper county after your consent to such conditions has been secured. The statute does not provide for the approval of this office to such conditions, and it would be highly improper for this office to attempt to formally approve or disapprove the proposed reopening plan which has been submitted to you by the reopening committee of The Ohio Savings Bank & Trust Company.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1754.

INTERPRETATION OF AMBIGUOUS STATUTES DISCUSSED—BUILDING AND LOAN ASSOCIATION—CERTIFICATES OF AMENDMENT TO ARTICLES OF INCORPORATION OR OF DISSOLUTION MUST BE APPROVED BY SUPERINTENDENT OF BUILDING AND LOAN ASSOCIATIONS BEFORE FILING WITH SECRETARY OF STATE.

SYLLABUS:

1. *When the practice of a department in which the administration of a state law has been placed, is uniform and long continuing, and the meaning of the statute, upon examination, is found to be ambiguous or doubtful, such interpretation can not be disturbed unless it can not be reconciled with the language of the statute.*

2. *In view of the uniform and long continued practice of the department and the ambiguity contained in Sections* 9643 *and* 9643-3, *General Code, the Secretary of State may not file in his office certificates of amendment to the articles of incorporation of a building and loan association or of dissolution of such association until such certificates shall have been first submitted to, and approved by the Superintendent of Building and Loan Associations of Ohio.*

COLUMBUS, OHIO, Oct. 23, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

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

"Section 9643 of the General Code of Ohio in part, is as follows:

'* * Upon receipt of Articles of Incorporation and all papers relating thereto, the Secretary of State shall forthwith transmit to the Superintendent of Building and Loan Associations a copy thereof and shall not record such Articles of Incorporation until duly authorized to do