

Based upon the foregoing citations and discussion, you are specifically advised that:

1. Courts of Common Pleas do not have jurisdiction in misdemeanor cases unless indictments are first returned by a grand jury, excepting in those instances wherein the Legislature has specifically given jurisdiction to said courts to try criminal cases upon affidavits.

2. In cases of felony a Justice has jurisdiction only as an examining magistrate, and such jurisdiction is not affected by the Tumey decision.

3. A Justice of the Peace, or Mayor is without jurisdiction to render final judgment in misdemeanors even though such final jurisdiction is attempted to be conferred by statute, except in those instances wherein the costs may be, and properly are secured as provided in Section 13499 of the General Code, or in cases wherein the statutes provide for the payment of the magistrate's costs irrespective of the outcome of the case, as in prosecutions under Section 1442 of the General Code which relates to violations of the Fish and Game Laws. However, if the defendant desires to take advantage of the question of jurisdiction in such a case, such objections must be made at the time of, or before trial.

4. In other cases of misdemeanors, such as traffic law violation, a Justice is without jurisdiction to render a final judgment unless as provided in Section 13511, General Code, the defendant waives in writing the right of trial by jury and submits to be tried by said Justice. A Mayor of course has final jurisdiction in such cases within the limitations of the Tumey decision.

5. The Probate Court under the provisions of Sections 13441 et seq., has jurisdiction to hear such criminal cases as it has jurisdiction to try upon the filing of an information by the Prosecuting Attorney. Such courts, however, have jurisdiction to hear cases arising under the Crabbe Act upon affidavit.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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3116.

CORPORATION—FOREIGN—UNLAWFUL TO USE WORDS "BANKER"  
OR "BANKERS".

*SYLLABUS:*

*It is unlawful for a foreign corporation to do business in this state where such corporation uses, as a part of its name or designation, the words "banker" or "bankers."*

COLUMBUS, OHIO, January 8, 1929.

HON. E. H. BLAIR, *Superintendent of Banks, Columbus, Ohio.*

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

"The provisions of Section 710-3 of the General Code of Ohio restrict the use of the word 'bank', 'banker' or 'banking' or 'trust' to banks as defined in Section 710-2 of the General Code of Ohio.

Stockholders of a certain bank organized and existing under the laws of this state are desirous of incorporating a separate company, its purpose being to engage in the security business. Said stockholders are desirous of using the word 'bankers' as a part of the name of the contemplated company.

It is my understanding that the statute first above referred to would prohibit the use of the word 'bankers' in the name of a corporation to be organized under the laws of this state, however, the question has been submitted to this Department whether or not, *if* such a company was organized under the laws of another state, could it qualify to do business in Ohio with the word 'bankers' as a part of its corporate name?

I am aware that several corporations organized in states other than Ohio, but not transacting a banking business, are doing business in this state and using the word 'banker' as part of their corporate name.

I would appreciate your opinion as to whether or not a corporation organized for the purpose of transacting a business other than banking under the laws of a foreign state, and having in its name either the word 'bank', 'banker,' 'banking' or 'trust,' may qualify to do business in this state, and not be subject to the penalty provided in Section 710-3 of the General Code."

I infer from your statement that you are satisfied, from prior opinions of this office, that a corporation cannot be organized under the laws of this state which incorporates, as a part of its name, the word "bankers". You now inquire, however, whether, a company organized under the laws of another state can qualify to do business in Ohio using this word as a part of its corporate name.

Section 710-3, General Code, provides, in part, as follows:

"The use of the word 'bank', 'banker' or 'banking' or 'trust' or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business is or may be conducted in this state, is restricted to banks as defined in the preceding section.

All other persons, firms or corporations are prohibited from soliciting, accepting or receiving deposits, as defined in Section 2 (G. C. Sec. 710-2) of this act and from using the word 'bank', 'banker', 'banking', or 'trust', or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business may be conducted in this state. Any violation of this prohibition after the day when this act (G. C. Secs. 710-1 to 710-189) becomes effective, shall subject the party chargeable therewith, to a penalty of \$100.00 for each day during which it is committed or repeated. Such penalty shall be recovered by the superintendent of banks by an action instituted for that purpose, and in addition to said penalty, such violation may be enjoined and the injunction enforced as in other cases.

\* \* \* "

In my opinion, this language clearly negatives the use of the prohibited words by any corporation, either domestic or foreign. In effect, the statute says that business cannot be conducted in this state under a name using the prohibited words except by banks. This prohibition is not limited in any way to domestic corporations and, of course, a foreign corporation, qualifying to do business in this state, intends to and does transact business herein. If any of the prohibited words are part of the corporate name, then the statute is violated.

The fact that such foreign corporations have been admitted does not, in my opinion, form a justification for the conclusion that in doing business in this state, there has been no violation of the law. The Legislature has used broad language and, until the courts have held otherwise, this language must be construed by this office in accordance with its plain meaning.

In earlier opinions to you upon this general subject, I have referred to the case of *Inglis vs. Pontius et al.*, 102 O. S. p. 140. There a firm was using, as descriptive of its business, the phrase "investment bankers". The distinction between the investment banking business and that of commercial banking is very generally recognized, but, nevertheless, the court held that the use of this phrase was unlawful. This case affirmed the Court of Appeals, whose opinion is found in 15 Ohio Appellate, 228. It was suggested to the Court of Appeals that there could be no deception in the use of the words in the manner then under consideration, but, on this point, the Court says on page 233:

" \* \* \* . We are not prepared to say that the Legislature intended to apply this law to investment bankers such as Otis & Company, and they may have made the law too broad, and perhaps the law should be amended so as to exclude investment bankers from its enforcement, but we apprehend that this is a matter for the Legislature and not for the courts to remedy.

\* \* \* "

This language is pertinent to the question you now raise, and I am of the opinion that the remedy, if any be needed, lies with the Legislature rather than with the courts or this office.

It may be suggested that several other states have provisions similar to the Ohio statute on this subject. Research has failed to disclose any instance in which the language of these analogous statutes have been the subject of judicial interpretation.

I am accordingly of the opinion that it is unlawful for a foreign corporation to do business in this state where such corporation uses, as a part of its name or designation, the words "banker" or "bankers."

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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3117.

APPROVAL, BONDS OF GUERNSEY COUNTY—\$27,885.46.

COLUMBUS, OHIO, January 8, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3118.

APPROVAL, BONDS OF GUERNSEY COUNTY—\$38,812.92.

COLUMBUS, OHIO, January 8, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*