

of subjecting the collateral to the payment of the obligation upon the default of the maker.

By "participation certificate" is usually meant an instrument containing a declaration of trust by a person or corporation who or which has taken the legal title to a parcel of real estate which is subject to a long term lease, that he or it holds an undivided interest as evidenced by such certificate, in such property and the rents received therefrom, for the owner of such certificate and will account therefor in the manner and form set forth in such certificate. The rights and duties of the trustees are usually set forth in a separate indenture.

By "certificate of beneficial interest in an investment trust" is usually meant an instrument containing a declaration of trust of a person or corporation who or which has taken title to certain securities, that he or it holds an undivided interest in such securities and the income arising therefrom as evidenced by such certificate in trust for the use and benefit of the owner of the certificate and that he or it will dispose of and account therefor to the certificate owner in the manner provided in such certificate or in the trust indenture referred to in such certificate.

Thus it is apparent that such "certificate of beneficial interest" does not materially differ from a "participation certificate" except as to the nature of the trust res.

In the opinion of my predecessor, rendered March 4, 1927, he held that a building and loan company could not invest its funds in "participation certificates." Such opinion of my predecessor would have been equally applicable to savings banks, and would prevent a savings bank from investing in "participation certificates" had it not been that the legislature specifically authorized the investment in that type of securities. See Section 710-140, paragraph (d), of the General Code. However, there is no specific mention of beneficial interest in investment trusts of the type referred to as in your letter, in such statute.

I am therefore persuaded to be of the opinion that although the trust res of such investment trust consists of securities of the types enumerated in Section 710-140, of the General Code, a savings bank has no authority to invest in shares or units of an investment trust.

Specifically answering your question, I am of the opinion that a savings bank may not invest in investment trust shares or units even though the securities composing the trust res conform to the requirements of the provisions of Section 710-140, of the General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

131.

TUBERCULOSIS HOSPITAL—HOW COMPENSATION OF MEMBERS OF BUILDING COMMISSION DETERMINED.

SYLLABUS:

1. *The cost of acquiring a site in connection with the construction of a county tuberculosis hospital and the compensation to members of a building commission, both of which items are payable from moneys received by the county from taxes raised or from the sale of bonds for such purpose, may be considered in*

computing the maximum amount of compensation which may be received by the building commission under Section 2334, General Code.

2. *Remaining funds raised from such source which are set aside for maintenance of the building after completion may not be taken into consideration in computing such compensation.*

COLUMBUS, OHIO, February 11, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date is as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

In a certain county in this state, the county commissioners submitted to a vote of the people the proposition of levying a tax of one mill each year for a period of three years to create a fund for the purchase of a site, the erection of a tuberculosis hospital, and the maintenance of the same for one year. A building commission was appointed by the Court of Common Pleas in an order in which it was provided that the compensation of such building commissioners should not exceed two and one-half per cent of the amount of taxes collected, or the proceeds of bonds issued for the construction of such improvement.

The total amount of taxes collected, up to September 15, 1932, was \$337,142.46. The expenditures made from this fund were as follows:

Purchase of Site.....	\$15,765.00
Architect	10,681.44
General construction and fixed equipment.....	214,473.15
Furnishings and detached equipment.....	14,533.78
Grading and landscaping.....	8,723.04
Water Line	10,034.12
Miscellaneous expenses of building commission.....	8,189.75
Compensation of members of building commission.....	8,428.56

Question: Were the members of the building commission entitled to two and one-half per cent commission upon the following items:

Site	\$15,765.00
Compensation to members of commission.....	8,428.56
Balance of fund which is to be used for maintenance.....	46,313.62."

Sections 2333 and 2334, General Code, provide as follows:

Section 2333. "When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party."

Section 2334. "The persons so appointed shall receive a reasonable compensation for the time actually employed, to be fixed by the court of common pleas and on its approval paid from the county treasury. Their compensation in the aggregate shall not exceed two and one-half per cent of the amount received by the county from taxes raised or from the sale of bonds for the purpose of constructing the building."

With respect to the first item about which you inquire, the syllabus of an opinion of this office appearing in Opinions of the Attorney General for 1927, Vol. II, p. 1576, is as follows:

"Where a building commission has been appointed for the construction of a county tuberculosis hospital pursuant to a vote of the people authorizing a bond issue, and a supplemental appropriation is made by the county commissioners for the purpose of improvement of the site and furnishing the building, such appropriation may be taken into consideration in fixing the compensation of such building commission, and such commission is authorized to expend the money so appropriated as a part of the building fund for such improvement."

The fourth branch of the syllabus of an opinion of my immediate predecessor, being Opinion No. 4884, rendered January 9, 1933, reads:

"The cost of acquiring real estate in connection with the construction of a county tuberculosis hospital may be considered by the court of common pleas in computing the maximum amount of compensation which may be received by the building commissioners under Section 2334, General Code."

I concur in the foregoing opinions.

If the item of compensation to members of the building commission is payable from the building fund which is made up of taxes raised for the purpose of constructing the building, then it is to be considered one of the items of cost of the construction of the building and should be treated the same as any other item of cost in computing the matter of compensation for the building commissioners. To illustrate, if the total cost of the building paid from the proceeds of bonds or from taxes raised for the purpose were \$1,000,000, then the maximum aggregate compensation of the commissioners would be \$25,000. Section 2334, supra, does not provide for the deduction of this or any other item of the construction cost before computing the maximum limitation of compensation of the commissioners.

It remains to be determined whether or not this compensation is one of the items of the cost of construction and payable from the construction fund. This office has ruled upon this question in an opinion appearing in Opinions of the Attorney General for 1916, Vol. I, p. 360. The syllabus is as follows:

"The compensation of a building commission as provided by section 2334, G. C., and all architects and other employes employed by said commission under provisions of section 2339, G. C., is payable from the building fund. The expenses of said commission, specified in section 2335, G. C., may be paid from the general county fund until said build-

ing commission fund becomes available for their payment, when they also should be paid from said building fund."

The last item about which you inquire is one of maintenance. You do not state whether this item is to provide for maintenance during construction or after the completion of the building. I assume the latter. Upon such assumption, this inquiry must be answered in the negative. Section 2334, *supra*, relates to the cost of construction of the building and has no reference to the cost of maintenance after the building is constructed. The building commissioners only serve until the building is completed and are appointed for such time only as provided in Section 2333, *supra*. Section 2338, relating to powers and duties of the building commission, provides that it may determine all questions connected with the building "until the building is completed and accepted."

In specific answer to your questions, it is my opinion:

1. The cost of acquiring a site in connection with the construction of a county tuberculosis hospital and the compensation to members of a building commission, both of which items are payable from moneys received by the county from taxes raised or from the sale of bonds for such purpose, may be considered in computing the maximum amount of compensation which may be received by the building commission under Section 2334, General Code.

2. Remaining funds raised from such source which are set aside for maintenance of the building after completion may not be taken into consideration in computing such compensation.

Respectfully,

JOHN W. BRICKER,

Attorney General.

132.

COUNTY AUDITOR—UNAUTHORIZED TO WITHHOLD TAX MONEYS FOR DISTRICT HEALTH FUND WHERE NO PROVISION MADE FOR SAME IN TAX BUDGET.

SYLLABUS:

A county auditor has no authority under Section 1261-40, General Code, to withhold for the district health fund from townships and municipalities in a general health district at any semi-annual tax settlement, tax moneys raised in such subdivisions when no provisions for such items have been included in the annual tax budgets adopted by such townships and municipalities.

COLUMBUS, OHIO, February 13, 1933.

HON. CHARLES W. LYNCH, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The Monroe County Board of Health and the Auditor of Monroe County have presented a question upon which we respectfully request your opinion.

If a County Board of Health has failed to submit an estimated budget on or about the first Monday of April, 1932, for the fiscal year next ensuing, as in Section 1261-40, G. C., and in the past it has not