

Drivers' License Law which could be construed as enlarging this authorization. The section in this respect is so clear and free from doubt that any further comment regarding your second question seems unnecessary.

It is, therefore, my opinion in specific answer to your questions that: (1) Under the provisions of Section 6296-31 of the General Code, information concerning the names and addresses may be obtained by any person "of not to exceed three holders of operator's or chauffeur's licenses in any one business day." (2) The Registrar of Motor Vehicles has no authority, under the provisions of Section 6296-31 of the General Code, on an application which by its terms requests in blanket form the names and addresses of all licensees whose chauffeur's or operator's licenses have been suspended or revoked, to furnish such a list. (3) The authorization conferred on the Registrar of Motor Vehicles by virtue of the provisions of Section 6296-31 of the General Code is limited to the furnishing of a list in which is contained only the names and addresses of the holders of chauffeur's and operator's licenses. A list containing information relating to the reason for which the chauffeur's or operator's licenses have been revoked or the period for which licenses have been suspended or revoked may not be furnished by the Registrar of Motor Vehicles upon application therefor.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3516.

MORTGAGE—CORPORATION ORGANIZED TO SERVICE SECOND MORTGAGE LOANS — HOMES — CONTRACTOR, BUILDER — SERVICE CHARGE — UNDISCLOSED PRINCIPAL—NOT TRUST COMPANY UNDER SECTIONS 710-150, ET SEQ. G. C. — NOT OF PUBLIC NATURE.

SYLLABUS:

A corporation organized for the purpose of servicing second mortgage loans on homes which a contractor had constructed, the corporation holding in its own name the second mortgage and remitting to the contractor for the amounts collected, less a service charge, the corporation

being limited to such an arrangement, would not be compelled to qualify as a trust company under Sections 710-150, et seq., of the General Code, because of not being affected with a public nature.

COLUMBUS, OHIO, January 6, 1939.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

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

“Several building contractors operating in one of the larger cities of this state have evidenced a desire to organize a corporation which would act as agent for such builders in the collection and servicing of second mortgage loans on homes which such builders have constructed.

Under the proposed plan the builder instead of taking the note and mortgage in his own name, would arrange so that such note and mortgage would be taken in the name of the corporation. The mortgage would be recorded in the name of the corporation and the corporation would then undertake to collect the installments and interest on the note and remit the proceeds to the builder, less a certain charge for collection and servicing. None of the money thus collected would be held for investment but would be remitted promptly on its receipt to the builder.

It will be observed that the proposed corporation would be acting merely as an agent for collection for an undisclosed principal, viz., its builder clients. The corporation would, as indicated, hold the second mortgage in its own name but for collection purposes only.

The question arises whether such corporation, if organized, would be a trust company within the purview of Section 710-150, et seq., of the General Code of Ohio and be compelled to qualify as such.

Will you kindly favor me with your opinion relative to this proposal.”

The disposition of your question will rest upon the construction of Sections 710-150, et seq., General Code of Ohio.

Section 710-150 provides in part as follows:

“No trust company, or corporation, either foreign or domestic, *doing a trust business* shall accept trusts which may be vested in, transferred or committed to it by a person, firm, association, corporation, court or other authority, of property within

this state, until its paid-in capital is at least one hundred thousand dollars, and until such corporation has deposited with the treasurer of state in cash the sum of one hundred thousand dollars * * *”

Section 710-151 provides the circumstances under which a foreign trust company may do business in this state.

Section 710-152 provides for the filing of a certificate of the tax commission of Ohio with the superintendent of banks that such a corporation has complied with the law of Ohio relating to foreign trust companies.

Section 710-153 provides for the examination of the records of trust companies doing business in this state.

Section 710-154 reads in part as follows:

*“No such trust company, foreign or domestic, authorized to accept and execute trusts, either directly or indirectly through any officer, agent or employe thereof, shall certify to any bond, note or other obligation to evidence debt, secured by any trust deed or mortgage upon or accept any trust concerning property located wholly or in part in this state, without complying with the provisions of sections 150, 151 and 152 of this act. * * *”*

Section 710-155 provides generally for the retirement of a foreign trust company from doing business in this state.

Section 710-156 provides as follows:

“A trust company may receive and hold moneys, or property in trust, or on deposit from executors, administrators, assignees, guardians, trustees, corporations or individuals upon such terms and conditions as may be agreed upon between the parties.”

Section 710-157 provides in effect that any court in this state may by order direct moneys or property under its control, or paid into court by parties to an action or legal proceeding or which are brought into court by reason of an order, judgment or decree, in equity or otherwise, to be deposited with a trust company designated by such court.

Section 710-158 relates to the permissive power of a trust company to act as agent or trustee for the purpose of registering, countersigning 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 cor-

poration, association, municipality or body politic, and that such a trust company may accept and execute any other corporate or municipal trusts not inconsistent with the laws of the state.

Section 710-159 pertains to the management or disposition of property and a blanket authority of trust companies to accept and execute all trusts.

Section 710-160 provides for the permissive authority of a trust company to accept and execute all trusts which may be committed to it by order of any court of record or probate court of this or any other state or of the United States and to act as executor, administrator, assignee, guardian, receiver or trustee, or in any other trust capacity, and receive and take title to any real estate which may be the subject of any such trust.

Section 710-161 provides that the capital stock of such trust company, with the liabilities of the stockholders existing thereunder, and the fund deposited with the treasurer of state, are to be held as security for the faithful discharge of the duties undertaken by such trust company in respect to any trust, which such trust company may undertake to execute.

Other provisions relating to the powers and duties of trust companies are enumerated in the sections following those above quoted and referred to.

It is recognized at the outset that the sections of the General Code relating to trust companies "doing a trust business" in this state are in *pari materia* and must be construed together to ascertain the legislative intent. It is apparent that the legislature intended that the sections relating to trust companies, as above referred to, should apply to trust companies possessed of the above mentioned powers, whether or not such trust company performs all of the above powers or not. Essentially the law relates to corporations doing the type of business referred to in these sections. Certainly such a trust company would be doing a trust business in this state, and certainly the statutes herein referred to relate only to such corporations doing such a trust business in this state.

It is readily apparent also that corporations possessed of the powers which are here under discussion are subject to the police power of the State of Ohio as regards their regulation and the protection of the beneficiaries of the various trusts, which such trust companies do every day execute.

In your communication you inquire of a situation where a building contractor would cause to be organized a corporation which would act as agent for such builders in the collecting and servicing of second mortgage loans on homes which such builders have constructed, and that it would be the intent of the building contractors that the corpora-

tion would be only acting as agent for an undisclosed principal, even though the corporation would hold the second mortgage in its own name, as stated, for collection purposes only.

It is noted that such an arrangement is one not purely an agency contract, neither does it amount to the creation of an express trust. Certain essential elements of both forms of legal relationship are lacking.

I think that your question may be disposed of without determining whether such a relationship amounts to either a trust or agency. Even if this relationship did amount to a trust, I do not believe the mere fact that the corporation was acting, in this particular instance, as a trustee would make it necessary that it qualify as a trust company under Sections 710-150 et seq., of the General Code of Ohio. The mere fact that a corporation exercises some of the powers of a trust company does not make it ipso facto a trust company. See Zollman, Banks and Banking, Vol. 2, p. 393, citing *People vs. National Security Company*, 177 N. Y. Supp., 838, affirmed in 232 N. Y., 586, 134 N. E., 582.

A trust company is defined in Corpus Juris, Vol. 65, p. 183, as one incorporated by statute and authorized by its special act to undertake the duties of executors, administrators and trustees for pecuniary reward.

As I have above stated, trust companies have, as contemplated by Sections 710-150 et seq., General Code of Ohio, a public nature due to the extent and magnitude of the trust properties which they control in their own name, and through usage and custom such companies have become more and more associated with the banking business and the terms are quite largely used interchangeably. Nearly all of the works relating to trust companies are treated with the banking corporations. Quite largely, the powers of a trust company, except the elementary and primary power of taking and administering trusts, depend upon the enumeration of its powers by the charter granted to it by the state by which such trust companies are organized.

The arrangement which you have described is one entirely private in nature between the contractor and the corporation which such contractor is instrumental in creating. By the contract between the contractor and the corporation, it is agreed that the corporation is to act only as agent for an undisclosed principal, to be compensated on the basis of service charges for money collected, ostensibly the money of the corporation. By the same contract, the corporation is under a duty to account to the contractor for money collected. No one stands to lose if the corporation does not properly account except the contractor. Such corporation would not be affected with a public nature so as to bring it within the operation of Sections 710-150 et seq., of the General Code of Ohio relating to trust companies doing a trust business obviously affected with a public nature.

For the reasons above stated, it is my opinion that a corporation organized for the purpose of servicing second mortgages on homes which a contractor had constructed, the corporation holding in its own name the second mortgage and remitting to the contractor for the amounts collected, less a service charge, the corporation being limited to such an arrangement, would not be compelled to qualify as a trust company under Sections 710-150, et seq., of the General Code, because of not being affected with a public nature.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3517.

MORAL OBLIGATION—NO AUTHORITY OR RIGHT VESTED IN STATE OR ANY POLITICAL SUBDIVISION TO PAY—EXCEPTION, TWO-THIRDS VOTE OF MEMBERS OF GENERAL ASSEMBLY—POWER OF BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES TO INSPECT ACCOUNTS, ETC., TO MAKE FINDINGS AGAINST MEMBERS OF GOVERNING BODY AND RECIPIENT OF BENEFITS—CITATIONS—AUTHORITY TO MAINTAIN ACTION.

SYLLABUS:

1. *Neither the State of Ohio nor any of its political subdivisions has authority or right to allow and pay a claim based solely and purely on moral obligation, except by a two-thirds vote of the members elected to each branch of the General Assembly as provided by Section 29, Article II of the Constitution of Ohio.*

2. *The Bureau of Inspection and Supervision of Public Offices of the State of Ohio has plenary power under Section 13, Article XVIII of the Constitution of Ohio and Sections 274 et seq., General Code, to inspect the accounts, reports and vouchers of all departments of State and each and every taxing district thereof and make such findings as the facts warrant.*

3. *When a claim based solely and purely on a moral obligation has been allowed and paid by the State or any of its political subdivisions in any other mode or manner than that provided by Section 29, Article II of the Constitution of Ohio, the Bureau of Inspection and Supervision of Public Offices is warranted in making findings against each and all the members of the governing body who participate in the allowance of such claim as well as the recipient or recipients of the benefits thereof.*