

follow necessarily therefrom that money may not be borrowed for that purpose. As I view this language, it merely prescribes a measure for the determination of the maximum amount which the municipalities are authorized to borrow in anticipation of tax revenues. Such borrowing cannot exceed one-half of the amount estimated by the budget commission to be received from taxation other than taxes for debt charges and less advancements. If the municipality stays within this limitation, it may borrow in anticipation of any tax revenues and the proceeds thereof may be used for the purposes for which the anticipated taxes were levied, collected or appropriated. Of course borrowing in anticipation of debt charges could not exceed in any event the amount estimated to be received for such purposes.

By way of specific answer to your questions, therefore, I am of the opinion:

1. A municipal corporation may not borrow money in anticipation of the collection of current revenues other than tax levies.

2. A municipal corporation may authorize and issue certificates of indebtedness in anticipation of the February, 1928, tax settlement and authorize the trustees of the sinking fund to use the proceeds of such sale for the redemption of bonds and the payment of interest, provided, however, that the aggregate of such certificates of indebtedness shall not exceed one-half of the amount estimated to be received from such settlement as estimated by the budget commission, other than taxes to be received for the payment of debt charges and all advances, and provided further that in any event the amount borrowed for such purposes shall not exceed the estimate by the budget commission of the amount to be received at such settlement for such purposes.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1870.

BUILDING AND LOAN—DEPOSIT OF IDLE FUNDS DISCUSSED.

SYLLABUS:

A building and loan association may deposit its idle funds in any financial institution, subject to inspection by the United States or the State of Ohio, and receive a passbook as evidence of such deposit.

COLUMBUS, OHIO, March 19, 1928.

HON. J. W. TANNEHILL, *Superintendent of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication, which reads as follows:

“Under Section 9661 of the General Code of Ohio, a building and loan association is authorized to deposit any of its idle funds ‘in any financial institution that is subject to inspection by the United States, or by the State of Ohio; and receive therefor certificates of deposit.’”

In several instances that have come to our attention recently, building and loan associations have made deposits of idle funds in banks and received passbooks evidencing such deposits.

In both building and loan associations and banks there are two forms of deposit, passbooks upon which amounts paid in periodically are credited and from which, under certain prescribed rules, withdrawals from time to time may be made, and certificates representing the deposit of a certain amount to be left for such certain fixed periods as may be prescribed and set out in the certificate.

In some cases we have found that a higher rate of interest is paid upon the passbook accounts than upon the certificate accounts.

Will you please advise whether or not this department can, under the provisions of law above referred to, sanction the depositing of funds upon passbooks, as well as upon certificates, or must we construe the wording of the law to be definite to the extent that certificates only may be accepted as evidence of any such deposits?"

As pointed out in your letter, with reference to idle funds, Section 9661, General Code, authorizes a building and loan association :

"To deposit any of such funds or part thereof, in any financial institution that is subject to inspection by the United States, or by the State of Ohio; and receive therefor certificates of deposit."

There is no definition of the words "Certificate of Deposit" to be found in the statutes relating to building and loan associations or elsewhere in the code. However, those words have, through usage over a long period of time, assumed a rather definite meaning.

A certificate of deposit may be defined as a receipt evidencing the deposit of a sum certain, payable according to the tenor thereof with or without interest. It may require the deposit to be left for a certain fixed period of time or be payable on demand, as set out in the certificate, and may be negotiable or non-negotiable, depending upon the wording of the same.

Morse in his work on Banks and Banking, 4th Edition, Section 297, says :

"A certificate of deposit, or the written acknowledgment of the bank that has received from a certain person a certain sum on deposit, is an instrument occasionally issued. Chiefly, it is given to persons not regular customers of the bank and not desiring to become such, but who have for some reason, and on some isolated occasion, desired to leave a sum of money in the custody of the bank. Some times, though more rarely, a regular customer, having some special object to subserve, may desire such a certificate. In form they are substantially simple receipts of the bank in negotiable form, for so many dollars, and so are only evidence of an indebtedness, like the bank-book."

A certificate of deposit creates no special relationship between the depositor and the bank, such as a trust relationship, nor does it entitle the holder to any special privilege over general creditors in case of dissolution or insolvency of the bank. The ordinary certificate of deposit confers no special benefit upon the holder thereof, which is not enjoyed by the holder of a passbook, except that a certificate

of deposit may be made negotiable while a passbook ordinarily is not. It differs from the ordinary checking or passbook account in that a deposit evidenced by a certificate of deposit is not subject to withdrawal by the issuance of checks. Another difference is that while banks sometimes pay interest on daily balances or average balances, a deposit evidenced by a certificate of deposit usually must remain for the time stated in the certificate before any interest is payable thereon.

The general authority to deposit idle funds by building and loan associations is found in the first part of Section 9661, General Code, supra, which reads:

“To deposit any of such funds or part thereof, in any financial institution that is subject to inspection by the United States, or the State of Ohio;
* * * ”

After the semicolon the following appears:

“and receive therefor certificates of deposit.”

The phrase last above quoted is separated from the preceding language by a semicolon. It does not modify or limit the language preceding it but is an additional grant of power. In other words, Section 9661, General Code, authorizes a building and loan association to deposit its idle funds in any financial institution subject to inspection by the United States or the State of Ohio, and further authorizes it to receive certificates of deposit for said deposits, if desired.

In view of the foregoing, it is my opinion that a building and loan association may deposit its idle funds in any financial institution that is subject to inspection by the United States or the State of Ohio and receive a passbook as evidence of such deposit.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1871.

APPROVAL, BONDS OF THE VILLAGE OF BEXLEY, FRANKLIN COUNTY—\$61,000.00.

COLUMBUS, OHIO, March 19, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

1872.

APPROVAL, NOTES OF PHILOTHEA SPECIAL RURAL SCHOOL DISTRICT, MERCER COUNTY—\$16,000.00.

COLUMBUS, OHIO, March 19, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.