313.

BOND SECURITY SYSTEM—HOUSE BILL NO. 16 PROBABLY CONSTITUTIONAL.

SYLLABUS:

House Bill No. 16 providing for a "Bond Security System" and requiring each bank or trust company receiving deposits to protect its depositors by giving bond or security in an amount at least equal to double the amount of its capital stock, which in no event shall exceed three hundred thousand dollars, will, if enacted into law, be valid and constitutional.

COLUMBUS, OHIO, April 12, 1927.

HON. WALTER J. MARION, *Secretary of Banks Committee, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent letter in which you request my opinion as to the constitutionality of the proposed amendment to House Bill No. 16.

The bill provides in substance for the establishment of what is termed "The Bond Security System," which system provides for a deposit with the superintendent of banks of a bond for the protection of general depositors.

It is unnecessary to quote all of the provisions of the act, but amendments of the present banking laws are provided to harmonize those laws with the proposed new system. Protection to the depositors is to be accomplished by a deposit with the superintendent of banks of a "bond or bonds, policy of insurance, or bonds of the United States, or municipal or district bonds approved by the attorney-general's department, or other guaranty of indemnity," which security is to be approved first by the common pleas court of the county in which the business is located and finally by the superintendent of banks.

The proposed amendment is incorporated in Section 710-190, General Code, the amendment in the following quotation being in italics.

> "Every banking institution, or trust company, incorporated under the laws of this state shall protect its depositors by giving blanket bond or bonds, or proper securities in an amount at least equal to double the amount of its capital stock, *in no event to exceed the sum of three hundred thousand dollars.*"

There is also a like amendment to Section 710-191. The effect of the amendment is to provide a maximum amount of bonds so that for banks having a capitalization of one hundred and fifty thousand dollars or above, the amount of the bond is three hundred thousand dollars, irrespective of the amount of the capitalization. For banks of less than one hundred and fifty thousand dollars, the amount of the bond or security required is determined to be twice the amount of the capitalization and therefore varies directly with the amount of the capitalization.

You inquire as to the constitutionality of the proposed amendment. The determination of your question necessarily involves a consideration of the constitutionality of the act itself. It appears to be settled law in the United States that the business of banking is so affected with the public interest that the states may, in the exercise of the police power, properly restrict and place safeguards around the transaction of this business without infringing upon the constitutional right of the persons affected thereby.

This principle has been recognized ever since the decision of a series of cases by the Supreme Court of the United States involving the constitutionality of various state laws creating a depositors' guaranty fund. These cases are found in 219 U. S., commencing on page 104 and continuing to page 140. There were four cases decided

in this series, and in all of them the constitutionality of the state law was sustained. The first of the series, The Noble State Bank vs. Haskell et al. lays down the well recognized rule in the third branch of the heading as follows:

> "The police power of the state extends to the regulation of the banking business, and even to its prohibition except on such conditions as the state may prescribe."

These cases have been followed in numerous instances and it is unnecessary to refer to the cases in which they have been approved. I call attention, however, to the case of Dillingham vs. McLaughlin, 264 U. S., page 370, in which the constitutionality of the state regulation of the banking business was reaffirmed and these cases cited with approval.

I have, therefore, no difficulty in determining that, generally, the state has power to determine that the business of receiving deposits shall not be undertaken except upon terms which it deems essential to the public welfare.

The proposed amendment to the bill raises another question. By its terms the amount of the bond or security is graduated until it reaches the sum of three hundred thousand dollars, and for banks having a capitalization in excess of one-half of three hundred thousand dollars, such bond or security remains constant at three hundred thousand dollars.

The suggestion might be made that this was a discrimination against the smaller bank in favor of larger institutions. This argument has been presented on numerous occasions where similar legislation is involved. It is unnecessary to cite authorities to the effect that the legislature, in the exercise of the police power, may make reasonable classification warranted by the degree of evil sought to be remedied.

In the case of Engel vs. O'Malley, 219 U. S. 128, which was one of the series of cases to which I have referred, the court in page 137 states the rule as follows:

> "Again, it is argued that the statute makes unconstitutional discriminations by excepting the classes mentioned in section 29d above, especially those in whose business the average amount of each sum received is not less than $500, and those who give a bond of $100,000 or $50,000. But the former of these exceptions has the manifest purpose to confine the law as nearly as may be to the class thought by the legislature to need protection, and the latter merely substitutes a different form of security, as it well may. 'Legislation which regulates business may well make distinctions depend upon the degree of evil.' Heath & M. Mfg. Co. vs. Worst, 207 U. S. 338, 355, 356, 52 L. ed. 236, 244, 28 Sup. Ct. Rep. 114. It is true, no doubt, that where size is not an index to an admitted evil, the law cannot discriminate between the great and small. But in this case size is an index."

It is evident that the amendment is based upon the necessity of protecting to a larger degree, the depositors in small banking institutions and that where an institution is of larger capitalization the necessity is not so great.

I regard the classification in this instance as entirely reasonable and within the power of the legislature. It is a well recognized fact that in the past few years the most of the disastrous bank failures in the state of Ohio have involved smaller institutions and that the larger banks are very seldom in financial difficulties.

The amendment does not exempt any bank from making a deposit or fix a maximum beyond which that deposit shall not be required. There is already upon the statute books a law requiring trust companies to make a deposit with the department of banks and banking a sum of one hundred thousand dollars and this is made irrespective of the amount of trust to be handled. While the figure is entirely arbitrary its validity has not been questioned.

I deem it unnecessary that express authority be found in the Constitution of Ohio for the regulation of banks. However, this authority is expressly conferred by Section 3 of Article XIII of the Constitution, the pertinent part of which is as follows:

> "* * * No corporation not organized under the laws of this state, or of the United States, or person, partnership or association shall use the word 'bank,' 'banker' or 'banking,' or words of similar meaning in any foreign language, as a designation or name under which business may be conducted in this state unless such corporation, person, partnership or association shall submit to inspection, examination and regulation as may hereafter be provided by the laws of this state."

You will note that this specifically authorizes the regulation of banks in such manner as may be provided by law.

I am therefore of the opinion that the proposed law, with the amendment suggested, would be a constitutional enactment.

Respectfully,
EDWARD C. TURNER,
Attorney General.

314.

JOHN BRYAN NATURAL HISTORY RESERVE—MAY BE USED AS A FISH HATCHERY.

SYLLABUS:

The construction, maintenance and use of a fish hatchery upon the lands devised by the late John Bryan to the state of Ohio, is not such a use of said lands as is inconsistent with or constitutes a breach of the conditions, upon which the devise of such lands was made, to the effect that the "said farm be cultivated by the state, as a forestry, botanic and wild animal reserve Park and experiment station," to be called "The John Bryan Natural History Reserve."

COLUMBUS, OHIO, April 13, 1927.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date reading as follows:

> "The State Department of Agriculture has requested permission from the Board of Control of the Ohio Agricultural Experiment Station to construct a fish hatchery on the 'John Bryan Natural History Reserve.' This property came to the State of Ohio through the will of John Bryan, deceased, and was accepted by the legislature of Ohio. Certain conditions were attached in the will in the following words:
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> 'My "Riverside Farm," consisting of 500 acres, more or less, situated southeast from and near Yellow Springs, Ohio, I give and bequeath to the state of Ohio, conditioned that said farm be cultivated by the state as a forestry, botanic and wild animal reserve park and experiment station, and call it after my full name, "The John Bryan Natural History Reserve;" and conditioned further, that my body and my wife's body shall never be