

OPINION NO. 70-055**Syllabus:**

1. The provisions of Sections 1111.02 and 1111.03, Revised Code, setting out the procedure for the establishment of branch banks do not apply to pure trust companies incorporated under Ohio law.

2. A pure trust company incorporated under Ohio law does not have the power or authority to establish a branch office.

To: J. Gordon Peltier, Director, Dept. of Commerce, Columbus, Ohio
By: Paul W. Brown, Attorney General, May 8, 1970

I have your request for my opinion which reads as follows:

"1. Do the provisions of 1111.02
and 1111.03, Revised Code, setting out

the procedure for the establishment of branch banks, govern the requirements for the establishment of branch offices by a pure trust company incorporated under Ohio law?

"2. If your answer to the first question is in the negative, what is the nature of the legal rights of an Ohio pure trust company to establish branch offices?"

Section 1101.01, Revised Code, provides that, as used in the Ohio banking code, Chapters 1101 to 1129, inclusive, of the Revised Code, the terms defined shall have the following meanings, unless the context otherwise requires:

"(A) 'Bank' means any corporation soliciting, receiving, or accepting money or its equivalent on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt, a ledger card, or otherwise, and also includes * * * trust companies, and special plan banks, but does not include any society for savings, building and loan association, credit union, federal savings and loan association, or title guarantee and trust company incorporated under the laws of this state.

" * * * * * * * * "

"(D) 'Branch' means an office or other place at which a bank receives money or its equivalent from the public for deposit and conducts a general banking business, but does not include a bank's principal place of business. * * *

" * * * * * * * * "

"(X) 'Trust Company' means any bank, trust company, or bank and trust company authorized to exercise trust powers.

" * * * * * * * * "
(Emphasis added.)

Examination of these definitions in connection with other provisions of the Ohio banking code makes it appear that there are two main categories of companies incorporated under Ohio law that are authorized to exercise trust powers: (a) corporations authorized to exercise the trust powers provided for in Chapter 1109, Revised Code, but not banking powers, herein called pure trust companies;

(b) corporations authorized to exercise the banking powers provided for in Chapter 1107, Revised Code, together with the trust powers provided for in Chapter 1109, Revised Code.

Since by definition the term "bank" includes both categories of companies authorized to exercise trust powers, both categories must organize under, and comply with, the provisions of Chapter 1103, Revised Code. Such provisions include the manner of preparation of the Articles of Incorporation, obtaining their approval by the Superintendent of Banks and filing them with the Secretary of State. Both categories before doing any business must secure authorization from the Superintendent based upon reports confirming that the required capital funds have been fully paid in. But at two points, there are differences that distinguish the two categories. First, the purpose clause of the Articles of Incorporation of a pure trust company would include the performance of trust functions only, whereas in the case of a bank or bank and trust company authorized to do a trust business, the purpose clause would include the performance of banking functions as well as the performance of trust functions. Secondly, there is a broad difference in the capital requirements. Section 1105.02, Revised Code, sets out the capital requirements for a bank and the added capital requirements for doing a trust business. Section 1109.03, Revised Code, sets out the capital requirements for doing a pure trust company business only.

The question is presented: how do Sections 1111.02 and 1111.03, Revised Code, relating to the establishment of branch banks apply to these two categories?

Section 1111.02, Revised Code, reads in part as follows:

"(A) A bank desiring to establish a branch, relocate an existing branch, or relocate its principal place of business, within the particular municipal corporation, township, or county designated in its articles of incorporation, shall submit an application therefor to the superintendent of banks.

"(B) Upon receipt of an application under division (A) of this section, the superintendent shall give written notice of its filing to each other bank whose principal place of business is located in the county where the proposed branch is to be located or within fifteen miles of the proposed branch. The bank shall, at or before the time of forwarding an application under division (A) of this section to the superintendent, cause notice of its filing to be published in a newspaper of general circulation in the county where the proposed branch or relo-

cated principal office is to be located. Such notice shall be published once a week for two weeks following the filing of such application. The superintendent shall conduct such investigation as he deems necessary. He may, in his discretion, hold hearings before the division or the banking board.

* * * * *

"(D) No application for approval of the establishment of a branch shall be approved by the superintendent unless the minimum capital, surplus, and undivided profits requirement specified in section 1105.02 of the Revised Code, has been met. Further, no such application shall be approved unless in conformity with section 1111.03 of the Revised Code."

Section 1111.03, Revised Code, reads in part as follows:

"(A) No branch shall be established until the consent of the superintendent of banks has been obtained, and no bank shall establish a branch in any place other than that designated in its articles of incorporation as its principal place of business, except * * *

* * * * *

Under Section 1101.01 (A), supra, "bank," as used in these branch bank sections, includes both categories of corporations authorized to perform trust powers. However, pursuant to the definition quoted in Section 1101.01 (D), supra, the term "branch" is limited to an office or other place at which a bank receives deposits and conducts a general banking business. Since a pure trust company is limited exclusively to conducting a trust business and is not empowered to receive deposits or do a banking business, it lacks the authorization and power to have an office at which it could receive deposits and conduct a banking business. I am of the opinion, therefore, that the branch office provisions of Sections 1111.02 and 1111.03, supra, do not apply to pure trust companies.

Your second question pertains to the nature of the legal rights of an Ohio pure trust company to establish a branch office if the express authority to establish a branch given to banks by Sections 1111.02, and 1111.03, supra, does not apply to pure trust companies. Banks and trust companies have only such powers as are expressly conferred by statute or those powers fairly implied from those expressly given. See the case of Ulmer v. Fulton, 129 Ohio St. 323 (1935), where the court holds at page 332:

"It is a prevailing rule, in Ohio and elsewhere, that banks and trust companies, though organized primarily for private profit, are of a preeminently public nature and have only such powers as are expressly conferred on them by their charters and by statute, or such as may fairly be implied from those expressly given. 5 Ohio Jurisprudence, 363, Section 73; 3 Ruling Case Law, 419, Section 46; 7 Corpus Juris, 585, Section 213; 4 Michie on Banks and Banking, 8, Section 5; 2 Morse on Banks & Banking (6 Ed.), 1557, Section 777; 1 Morse on Banks & Banking, 14, Section 6."

There is no express statutory power accruing to a pure trust company from which the power to establish a branch or branches may be implied.

Not only is there absence of a basis upon which power of pure trust companies to establish branches may be implied, but the legislature has evidenced its intent contra to such implied power. Former Section 1103.09, Revised Code, effective prior to January 1, 1968, setting out the procedure for the establishment of branches, applied equally to banks and to pure trust companies. This is true because at that time the definition of "bank," appearing in then Section 1101.01, Revised Code, included trust companies, the same as does present Section 1101.01, supra. But there did not then exist a delimiting definition of "branch," reducing its applicability exclusively to offices doing a banking business. Thus, taking into account the conclusions reached in answer to your first question, the legislature, by its enactment of the new banking code, has withdrawn express authority previously existing for pure trust companies to establish branch offices.

Where the legislature makes material changes in statutory language, it must be presumed that it intended to change the effect and operation of the law. See the case of State, ex rel. v. Nolte, 111 Ohio St. 486 (1924), at page 496:

"It is, of course, a well-settled rule of interpretation, well expressed by this court in Board of Education of Hancock County v. Boehm, 102 Ohio St., 292, 131 N.E., 812, that:

"When an existing statute is repealed, and a new and different statute upon the same subject is enacted, it is presumed that the Legislature intended to change the effect and operation of the law to the extent of the change in the language thereof."

Under the provisions of former Section 1103.09, supra, effec-

tive prior to January 1, 1968, neither a bank doing a trust business nor a pure trust company could establish a branch without the consent of the Superintendent of Banks, and no branch could be established in a place other than that designated in its Articles of Incorporation or in certain prescribed territory contiguous thereto. Under the provisions of former Section 1103.11, Revised Code, effective prior to January 1, 1968, a prescribed amount of additional capital was required for each branch established. All of these requirements are imposed under the new banking code, Sections 1111.02, 1111.03, and 1105.82, Revised Code, respectively, as applied to banks and banks doing a trust business, but for the reasons set out above, these requirements cannot apply to pure trust companies.

It is not a reasonable interpretation of the statutory changes brought about by the new banking code that the legislature intended to free pure trust companies from the territorial restrictions, requirement of approval by the Superintendent of Banks, and additional capital requirements, for each new branch, and at the same time, have them apply to banks doing a trust business. The reasonable legislative intent to be derived from these statutory changes, along with withdrawal of express authority to establish branches, is to the effect that pure trust companies lack power and authority to establish branch offices.

I am, therefore, of the opinion and you are so advised:

1. The provisions of Sections 1111.02 and 1111.03, Revised Code, setting out the procedure for the establishment of branch banks do not apply to pure trust companies incorporated under Ohio law.

2. A pure trust company incorporated under Ohio law does not have the power or authority to establish a branch office.