"Sec. 3298-56. Whenever there is presented to the trustees of a township, a petition signed by not less than thirty per cent of the electors of the township as shown at the last preceding general election held therein, requesting the submission to the electors of the township of the question of issuing bonds in an amount not exceeding twenty thousand dollars for the purpose of providing fire apparatus and appliances and buildings and sites therefor for the use of volunteer fire companies, the trustees shall provide by resolution for the submission of such question to the electors at the next general election."

Section 3298-57 G. C. provides for the submission to the electors of the question of issuing bonds, and section 3298-58 and section 3298-59 relate to the issue of said bonds, when authority therefor has been obtained, and provide for a special fund in the township treasury known as "the fire equipment fund."

It appears from your letter, however, that what is in contemplation is not simply a purchase by the township trustees of Cranberry township of an auto fire extinguisher, but a purchase "in conjunction with the village council of New Washington." You further indicate that the trustees desire to pay one half of the cost and the village authorities desire to pay the other half of the cost of the equipment in question.

H. B. 332, above referred to, makes no provision for joint action by a township and a village in the matter of the purchase of fire apparatus, and I am unable to find any statutory provision whatever for such joint action. It does not, of course, follow that whatever can be done by public boards or officers singly, can as a matter of law be done by them in conjunction with each other. That such an arrangement might in many cases conduce to convenience and economy of public funds may be conceded, but these considerations do not, of course, atone for the lack of statutory authority.

For reasons just given, I am of the opinion that the plan referred to in your letter, to-wit: a joint purchase of an auto fire extinguisher by the township trustees and the council of a village within the township, cannot legally be consummated.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1642.

BANKS AND BANKING—STATE BANK MAY ESTABLISH BRANCHES IN THOSE CITIES AND VILLAGES ONLY WHICH TOUCH OR ABUT UPON PLACE DESIGNATED IN ITS ARTICLES OF INCORPORATION—SUCH BANK MAY NOT MAKE LOANS SECURED BY MORTGAGE UPON REAL ESTATE IN STATES WHICH DO NOT BOUND OR ABUT UPON OHIO.

1. *A state bank may establish branches in those cities and villages only which touch or abut upon the place designated in its articles of incorporation for the transaction of its business.*

2. *Such bank may not make loans secured by mortgage upon real estate in states which do not bound or abut upon Ohio.*

COLUMBUS, OHIO, November 8, 1920.

HON. IRA R. PONTIUS, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—You have requested my official opinion as to the meaning of the

word "contiguous" as used in section 710-73 G. C. and the meaning of the same term as used in section 710-112 G. C. The former section is as follows:

> "The books and records, except books and records of deposit and trust, of every bank, at all reasonable times shall be open to the inspection of every stockholder. All books and records of the bank shall be kept at all times in the bank. No branch bank shall be established until the consent and the approval of the superintendent of banks has been first obtained, and no bank shall establish a branch bank in any place other than that designated in its articles of incorporation, except in a city or village contiguous thereto. If such consent and approval is refused, an appeal may be taken therefrom in the same manner as is provided in section 45 of this act."

Section 710-112 contains the following language:

> "Loans by banks upon mortgage notes shall be made upon first mortgage upon real estate situated in this state, or in states contiguous thereto, and shall not exceed forty per cent (40%) of the value of such real estate if unimproved, and sixty per cent (60%) of such value if improved, and the improvements shall be kept adequately insured. In the case of commercial banks not more than fifty per cent (50%) and in the case of savings banks and trust companies, not more than sixty per cent (60%) of the amount of the paid in capital, surplus and deposits of such bank or trust company at any time shall be invested in such real estate securities. Loans on collateral enumerated in clauses (i), (j) and (k) of section 111 of this act, shall not exceed eighty per cent of the value of such collateral."

Section 710-41 G. C., which provides for the organization of banking corporations, requires the articles of incorporation to state "the place where its business is to be transacted, designating the particular city, village or township."

Your communication advises that your department has been ruling that branch banks may not be established in territory except such as touches the political subdivision designated in the articles of incorporation. Is this the proper view of the law or may such branch banks be established in cities or villages which are near but not in actual contact with the place where the bank has chosen by its articles to transact its business?

Are state banks confined by section 710-112 to mortgage loans upon real estate situated in the states which bound Ohio?

In endeavoring to answer these questions consideration has been given to the definitions of the term "contiguous" found in the authorities, and to the context of the sections quoted. The word is defined in Webster's New International Dictionary as meaning

> "In actual contact; touching; also, near though not in contact; neighboring; adjoining."

The definition given by the New Standard Dictionary is as follows:

> "Touching or joining at the edge or boundary; close together; adjacent; adjoining."

> "Contiguous. Adjacent; in actual contact; in actual close contact; in

actual or close contact; near, close together, neighboring; adjoining; lying adjoining; meeting or joining at the surface or border; touching; touching or joining at the edge or boundary; touching sides; touching along a considerable line. The word 'contiguous' is a relative term, and depends considerably on the context and the subject under consideration; and it has been construed variously by courts according to circumstances."

13 C. J., page 110.

The following cases afford examples of the various definitions given the term:

In *Culver* vs. *Waters,* 248 Ill. 163, the court considered a statute permitting any number of contiguous pieces of land in the same county to be included in one application for registration of title. The owner of lots, separated and scattered through the city, offered them for registration in one proceeding. The court said:

"The first and ordinary meaning of 'contiguous' is 'in actual contact; touching.' (Web. Int. Dict.) 'touching; meeting or joining at the surface or border' (Cent. Dict.). These definitions accord with the meaning generally given to this word. All of the lots here in question can not be said to be contiguous under this definition. * * * The intent of the legislature is to be found in the ordinary meaning of the words of the statute. When the sense will bear it, the usual and popular meaning must be given to the words. * * * Before denying a word its ordinary meaning the courts must be sure that they are following the legislative intention."

In *Clements* vs. *Crawford County Bank,* 64 Ark. 7, it is said in the syllabus:

"Two parcels of land which corner with each other, and on one of which a dwelling house is located, may be claimed as a homestead where they constitute all the land the claimant owns, and do not exceed the legal area and value."

In the opinion it was said that it had been theretofore held by the court that a homestead could not consist of two noncontiguous tracts such as two pieces of land a mile apart.

In *Arkell* vs. *The Commerce Ins. Co.,* 69 N. Y. 191, it was decided that the word "contiguous" when used in a policy of fire insurance in reference to a building, means in close proximity, in actual close contact, and that gas works fifty feet from the building were not contiguous thereto within the meaning of such policy. The court said:

"'Contiguous' is defined to be adjacent, in actual close contact, touching, near. The word 'contiguous' is a relative term, and when employed in reference to a building, evidently means in close proximity to the same."

In considering whether the arrangement of a senatorial district violated a provision of the New York constitution that such districts should be as compact in form as practicable, the court of appeals, *In matter of Sherrill* vs. *O'Brien,* 188 N. Y., 185, said:

"In construing the language of the constitution as in construing the language of a statute the courts should look for the intention of the people and give to the language used its ordinary meaning. The ordinary and plain meaning of the words 'contiguous territory' is not territory nearby,

in the neighborhood or locality of, but territory touching, adjoining and connected, as distinguished from territory separated by other territory."

The supreme court of North Dakota in *Griffin* vs. *Dennison Land Co.,* 18 N. D., 246, went so far as to hold that the term "contiguous" did not apply to two tracts which touched only at the corners. There is an elaborate discussion of authorities and definitions in the opinion.

Holston Salt & Plaster Co. vs. *Campbell,* 89 Va., 396, was a case in which the court had to consider the effect of a deed making a conveyance of a certain estate and the lands contiguous thereto. The holding was that a tract of land separated by the intervening lands of other persons and distanced therefrom three quarters of a mile was not embraced within the conveyance. It is said in the syllabus:

"Words having a primary meaning must be understood in that sense, unless the context shows that it was otherwise intended. Two tracts of land described as being 'contiguous' must touch each other on one side."

At page 398 of the opinion appears this language:

"What, then, is the meaning of 'contiguous'? Its primary meaning, according to all the lexicographers, is 'in actual contact' or 'touching', from the two Latin verbs *con* and *tangere.* It is not synonymous with 'adjacent' although sometimes used in that sense and vice versa. 'What is adjacent' says Worcester 'may be separated by the intervention of some other object; what is contiguous must touch on one side.

The word, then, having a primary meaning, must always be understood in that sense unless the context shows that it was otherwise intended."

There are a number of decisions in which a broader application of the term has been made to the facts considered.

Thus, *In Matter of Payne,* 51 N. Y. misc., 397, 101 N. Y. S., 367, the court said:

"The constitution provides that the districts shall consist of contiguous territory. Richmond county is not contiguous to any other territory in the sense that it touches it. 'Contiguous' is defined by Webster to be 'in actual contact; touching; also, adjacent; near, neighboring, adjoining' and in Houghton county vs. Blacker, 92 Mich. 638, it was held that so far as island counties are concerned they may be contiguous although separated by wide ranges of navigable deep water."

It appeared from the facts that Richmond county touched only New York county and Kings county and that there was a constitutional provision against joining it with either of these. The next nearest county was Queens and it was held that Richmond county might be properly joined with it. Therefore what is termed above as the "primary meaning" of the term "contiguous" could not be applied on account of the express constitutional provision against the joinder.

The case was reversed in *Sherrill* vs. *O'Brien,* supra, not on the point of contiguity, but because another constitutional provision relating to ratio of population was violated. But the general definition and the exception was noted at page 207.

"Richmond county is not contiguous to Queens county within the meaning of contiguous as thus defined. Although Richmond county by

its statutory boundaries adjoins the county of Kings, the latter county by its statutory boundaries intervenes between the county of Richmond and the county of Queens. Richmond county, never having had a population sufficient to entitle it to a senator, has by reason of its insular situation been peculiarly situated. The people, by constitution and by acts of the legislature, have treated it as an exception to the mandatory provision of the constitution in regard to contiguity, and because it has been necessary it has been joined in senate districts with counties whose actual and statutory boundaries do not touch or adjoin it."

In *Baxter* vs. *York Realty Co.,* 112 N. Y. S., 455, the court construed a provision of an ordinance requiring the making of certain excavations so as to "preserve any adjoining or contiguous wall, etc." The plaintiff's wall was five feet from defendant's excavation and the latter claimed that there was no contiguity within the meaning of the regulation. The court held that "contiguous" meant nearness of structure, the evil to be prevented being the disturbance by the excavation and it being usual to construct houses with intervening spaces between.

State vs. *Chehalis County,* 106 Pac., 481, involved a statute of Washington which gave log driving and boom companies authority to condemn the right to damage by artificial freshets, lands contiguous to rivers. It was held that the term "contiguous" could not be given the restricted meaning of "next to" or "touching." The court said :

"Lands not bordering upon the river or forming its banks, but subject to damage by its overflow are as much entitled to protection from damage caused by overflow as the land next to and forming the bank of the river."

The purpose of the act was to permit the condemnation of all flooded lands and the reason for the broad definition is apparent.

The supreme court of Wisconsin, in *Northern Pacific Railway Co.* vs. *Douglas County,* 145 Wis., 288, said:

"'Adjacent' is sometimes used for touching on or bounded by; but strictly speaking it signifies near to but not touching; 'contiguous' is probably sometimes also used in the former sense and sometimes and more properly in the latter, while 'adjoining' is really the proper term for any contact with, though each of such words is occasionally used in a perverted way, it will be found that they have been construed variously by courts according to circumstances. 'Adjacent' and 'contiguous' as well, used alone, have been held to mean touching at times, while generally they have been used probably in the proper sense in legislative enactments and it is cases of such use that the courts have dealt with."

However, the recognition of the primary meaning of "contiguous" may be noted in the reference to the earlier case of *Hennessy* vs. *Douglas County,* 99 Wis., 129, in which it is said (p. 137):

"The word 'adjoining,' in its *etymological* sense, means *touching* or *contiguous,* as distinguished from *lying near* or *adjacent.*"

In Meissner vs. Toledo, 31 O. S., 387, the court construed a statute permitting the levy of assessments "upon lots and lands benefited thereby including lots and lands that are contiguous and adjacent, as well as those that abut." It said:

"* * * what is meant by 'contiguous and adjacent' lots or lands? That they are other than abutting lots and lands is perfectly clear from the context.

The meaning of these words, especially 'adjacent,' can not be limited by any absolute or fixed measurement, but, in each case must be determined by the circumstances."

Many other authorities, including all those to which my attention has been directed during the consideration of these questions, have been examined and analyzed. They contain definitions of the term "contiguous," but do not deal with states of facts which make their discussion helpful here.

I think the authorities warrant this abstract statement. The word "contiguous" is a relative term and its meaning depends on the context and the subject matter under consideration; its primary meaning is "touching" or "in actual contact." In the cases in which a broader meaning has been given to it may be found particular reasons for a departure from the original definition. So we enter upon the consideration of the context of the statutes quoted with a presumption in favor of the primary and etymological meaning of the term.

Now let us examine first the context of section 710-112 because the construction of the latter is not as difficult as that of 710-73. We are to bear in mind that the foreclosure of a mortgage can be had in the courts of the state only in which the real estate is situated. The bank examiner will not be consulted about loans contemplated by section 710-112 before they are made. But the department may be called upon to consider their validity after they are made, and a knowledge or investigation of the laws of the states where the property is situated becomes necessary.

Unless the word "contiguous" has reference solely to the states touching Ohio, there is absolutely no method provided for the determination of its meaning. The officers of one bank might think that it was applicable to Illinois or Tennessee or New York; those of another to the New England States, for if it is a relative term, Massachusetts is "contiguous" to Ohio if the comparison is made with the distance from Ohio to California. Then different examiners or superintendents of banks might not be in accord in their views. There would, of course, be no standard and if the question arose on foreclosure it would have to be determined by the court of another state. Such courts would not be bound by the decisions of each other or by the views of your department. Certainly no such uncertainty, not to say hazard, was contemplated by the legislature.

I therefore conclude that not only the etymology of the term "contiguous" but the context of section 710-112 requires that the word should there be given its restricted meaning and that banks may not take mortgages on real estate situated in states which do not touch Ohio.

If the correct view of the meaning of the term in section 710-112 has been reached, we have some light on the construction to be given to section 710-73. Where the legislature uses a term more than once in the same act in relation to the same subject matter, the presumption is that it is to have the same meaning wherever it so occurs.

Rhodes vs. Weldy, 46 O. S., 234, 36 Cyc. 1131.

Take the following sentence in section 710-73

"No branch bank shall be established until the consent and approval of the superintendent of banks has been first obtained and no bank shall

establish a branch bank in any place other than that designated in the articles of incorporation, except in a city or village contiguous thereto."

The superintendent is vested with judgment and discretion regarding the establishment of the bank, but the provision as to its location is positive. If the sentence had read in substance that no branch should be established until the consent and approval of the superintendent had been first obtained or at any place which he believed to be too far distant from the bank's original location, one meaning would be clear. And that statement would have been the natural one for the legislature to have made if it meant to give the superintendent the right to pass on the question of location.

As noted above, section 710-41 requires the articles of incorporation of a bank to state

"The place where its business is to be transacted, designating the particular *city, village* or *township.*"

And under section 710-73 the establishment of a branch is limited to a contiguous *city* or *village,* the word "township" being omitted.

It is a well known fact that abutting upon a few larger cities of the state are separate municipal corporations. These units are blended socially and for business purposes though they have separate municipal governments. In my opinion the legislature treated such a collection of cities or villages as one for banking purposes and within the purview of the banking act, but did not have that conception of those not so located and connected.

The omission of the term "township" from section 710-73 is significant. There is no right granted to establish a branch in a contiguous township although a bank's original articles may state the township in which it is to do business.

It may be argued that a part of a village not touching the city might be nearer its central point than the extreme limit of another village which does touch it; or that there is more nearly an identity of interest and a closer business connection existing between the people in the city and those who may live in a village one-half mile away than between the former and those who may live in an adjoining city which extends several miles from the greater city's limits. But this condition would be, to say the least, unusual, and unless we are to adopt the restricted meaning of the term "contiguous" who is to say or determine how far away a branch bank may be placed?

In *Bruner* vs. *Citizens Bank of Shelbyville,* 120 S. W., 345, a decision by the court of appeals of Kentucky, it appeared that a bank whose charter permitted it to carry on its business at Shelbyville, Ky., had attempted to establish a branch bank at the town of Waddy. The secretary of state contended that under its authority to do a general banking business it had no right to establish branches and the court so held. It said:

"But the whole body of the public is directly interested in the conduct and management of banking institutions, because they are depositors in which is kept practically all the money of the country; and it is with the money so deposited that banks are enabled to successfully carry on a profitable business. The money employed by other corporations is usually confined to that paid in by the stockholders or borrowed; while the greater part of the money employed by banks is money that has been placed with them by depositors for safe-keeping. It is therefore of the highest importance that the business of banking should be carefully supervised by the

state in the interest of the public, and surrounded by such salutary safeguards as will maintain the solvency of these institutions. The loss occasioned by the failure of a private corporation is generally confined to the stockholders and creditors, while the failure of a bank brings ruin and disaster to the hundreds and often thousands of people who have placed with it on deposit their earnings, and it is to secure this depositing public from loss that the state through its agencies exercises a supervisory care over banking institutions. To extend by implication the powers of a bank by allowing it to exercise privileges not necessary to carry on the business would be to increase the probability of loss to the public by its management or failure."

Section 710-37 G. C. requires that the capital of a commercial or savings bank or a combination of both shall be not less than twenty-five thousand dollars; provided that in cities, the population of which exceeds ten thousand, such capital shall be not less than fifty thousand dollars.

As to capital requirements, the court said in *Bruner* vs. *Citizens Bank,* supra:

"In addition to this, when the legislature has fixed the amount of capital stock that a bank must have before commencing business, graded in some respects according to the population and needs of the community where the bank was to be located, it was certainly not contemplated or intended that upon this capital designed to be employed in one locality a bank might set up an unlimited number of branches and do a volume of business upon money received from depositors in widely separate communities entirely disproportionate to the capital invested."

Of course the Bruner case is not controlling here because there was no statutory authority in Kentucky to establish branch banks. But I think it states a limitation found in the common law and an admonition against the construction of doubtful language in favor of a departure from such limitation.

As executive officers we are to ascertain the meaning of these statutes, not to determine the wisdom of their enactment. If as they stand they interfere with legitimate investment of capital or proper banking service to a community, or its business interests, a corrective remedy exists.

You are therefore advised:

(1) That a state bank may establish branches in those cities and villages only which touch or abut upon the place designated in its articles of incorporation for the transaction of its business.

(2) That such bank may not make loans secured by mortgage upon real estate in states which do not bound or abut upon Ohio.

Respectfully,
JOHN G. PRICE,
Attorney-General.