

evident purpose of the remainder of the statute in mind, there is a very substantial reason for saying that it was merely intended to fix the status of the several county school districts in the state, and in view of the fact that the legislature, in the same act in which the statute was enacted (104 O. L. 133) provided for the transfer of territory from one county school to another (Section 4692, General Code, 104 O. L. 135) which provision clearly was intended to operate prospectively, I am of the belief that this construction is the proper one.

I do not believe the legislature intended to set up a procedure whereby school districts which extended into two or more counties might be automatically transferred from one county school district to another at the mere whim of a county board of education, by detaching or attaching territory to the district so as to change the amount of territory in one or the other counties into which the district extended and thus make that amount of territory greater or less, as the case might be, than in the other, especially in view of the fact that at the time of enacting this statute a method was provided for the transfer of a part or of an entire school district from one county school district to another. The purpose of the entire statute, was, in my opinion, nothing more than to define county school districts.

I am therefore of the opinion in specific answer to your questions, that the Loveland Village School District as constituted after the Loveland District of Clermont County had been transferred to the Hamilton County School District and attached to Loveland Village District of Hamilton County, is a part of the Hamilton County School District, regardless of the proportionate amount of its territory which lies in Clermont and Hamilton Counties.

If it seems desirable that this district should be a part of the Clermont County School District it may be transferred in toto by action taken in pursuance of Section 4696, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3865.

SUPERINTENDENT OF BANKS—MAY SELL ASSETS OF BANK BEING LIQUIDATED, AND TAKE NOTE SECURED BY SECOND LIEN—LIMITATIONS.

SYLLABUS:

When it appears to the Superintendent of Banks that the transaction is reasonable, proper and business-like in all respects, and will probably expedite the liquidation of the bank, and he has obtained the approval of the court of common pleas having jurisdiction in the matter, he may sell an asset or assets of the bank being liquidated, and take in part payment the note of the purchasers secured by second lien on the purchased assets.

COLUMBUS, OHIO, December 16, 1931.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion which reads as follows:

“A corporation proposes to purchase from the undersigned, as

Superintendent of Banks in charge of the liquidation of a bank, certain securities and property at the appraised value thereof, and to pay therefor seventy-five (75%) percent of the agreed purchase price in cash and the balance by its note secured by a second lien on the securities and property so purchased. The corporation proposes to provide the said seventy-five (75%) percent of the purchase price by a loan secured by the pledge of all of the securities and property so purchased.

The assets proposed to be purchased are of such nature and quality that they may reasonably be exchanged that the corporation, the proposed purchaser, will be able without difficulty to sell, convert or collect the same and pay the undersigned in full on or before the due date of the note to be given to the undersigned for the twenty-five (25%) percent of the purchase price.

In disposing of real estate owned by closed banks, it may be necessary in many instances to take back second mortgages for some part of the purchase price and the question is presented as to whether or not I have authority to make sales in such a manner.

The questions submitted to you are intended to cover broadly my right as Superintendent of Banks, in charge of liquidations, subject to the approval of the proper court, to make sales on terms of payment, which include deferred payments secured by junior lien on the property sold.

Your opinion is, therefore, requested as to my authority as Superintendent of Banks, in charge of the liquidation to sell an asset or assets of the bank being liquidated and take in part payment the note of the purchaser secured by second lien on the purchased assets, when (1) it appears to me that the transaction is reasonable, proper and businesslike in all respects and will probably expedite the liquidation of the bank, and (2) I have obtained the approval of the Court of Common Pleas having jurisdiction."

Section 710-95, General Code, in so far as material to your inquiry, reads:

"Upon taking possession of the property and business of such bank, the superintendent of banks * * * upon the order of the common please court in and for the county in which the office of such bank was located, may sell or compound all bad or doubtful debts, and on like order may sell the real estate and personal property of such banks on such terms as the court shall direct. The superintendent of bank, shall give notice to such bank of the time and place of making application to said court for such order. The superintendent of banks upon the terms of sale or compromise directed by the court, shall execute and deliver to the purchaser of such real and personal property such deeds or instruments as shall be necessary to evidence the passing of the title; and if said real estate is situated outside the county in which the office of the bank was located, a certified copy of such order authorizing and ratifying said sale shall be filed in the office of the recorder of the county within which said property is situated; * * *."

From the language of this section it was apparently the intention of the Legislature to require the Superintendent of Banks, when he has taken possession

of the property and business of a bank, to sell the real estate and personal property not only for cash, but "on such terms as the court shall direct."

I would further call your attention to the fact that in each of these sales under this section of the statutes, it is necessary to obtain an order from the court of common pleas which would be in effect a confirmation of sale including the terms and conditions thereof.

While we find no decisions in Ohio of the Supreme Court or Appellate Courts, it is well to bear in mind that this section of the statute is copied almost verbatim from the New York Banking Statute and modeled somewhat after a similar section in the National Banking Act.

In the case of *Gockstetter v. Williams*, 9 Fed. (2d.) 354, the purchaser from the receiver, of certain assets, agreed to pay therefor a sum equal to the face value of the secured and preferred claims and fifty percent of the claims of unsecured creditors in five equal installments, the first as soon as practicable, but not later than thirty days after the sale, and the remaining installments on the first day of December of each year thereafter, all unpaid installments to bear interest at the rate of two and one-half percent per annum. Section 5234, Revised Statutes, construed in the case above cited also contained the language "may sell all the real and personal property of such association on such terms as the court shall direct." The first branch of the syllabus reads as follows:

"Receiver's sale of assets in the course of liquidation need not be for cash or for a price definitely fixed at the time of sale, if provisions are made for rendering it certain."

See also the case of *Jackson v. McIntosh*, 12 Fed. (2d.) 676.

I am therefore of the opinion that when it appears to the Superintendent of Banks that the transaction is reasonable, proper and business-like in all respects, and will expedite the liquidation of the bank, upon obtaining the approval of the court of Common Pleas having jurisdiction in the matter he may sell an asset or assets of the bank being liquidated and take in part payment the note of the purchasers secured by second lien on the purchased assets.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3866.

FINES—FROM STATE CASES IN POLICE COURT, MARIETTA—DISTRIBUTED UNDER SECTION 3056, GENERAL CODE.

SYLLABUS:

Fines in state cases arising in the police court of Marietta, are subject to the provisions of Section 3056 of the General Code, in its present form, and also as enacted by the 88th General Assembly.

COLUMBUS, OHIO, December 16, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This acknowledges receipt of your letter which reads as follows:

"House Bill No. 489, 113 O. L., page 764, establishes a Police Court