5918.

TITLE GUARANTEE AND TRUST COMPANY—ORGANIZED AFTER EFFECTIVE DATE OF SECTION 710-3, GENERAL CODE—MAY NOT USE WORD "TRUST."

SYLLABUS:

Section 710-3, General Code, prohibits a title guarantee and trust company organized after the effective date of such section from using the word "trust" as a designation or name under which its business is conducted.

COLUMBUS, OHIO, August 3, 1936.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: You have advised me that in 1925, "The X Title and Investment Company" was incorporated under the laws of Ohio, to do a mortgage and investment business. After several changes in its capital structure, its purpose clause was amended in 1932 to permit it to do the business of a title guarantee and trust company. In 1933, its corporate name was changed to "The X Title and Trust Company."

You inquire whether such company is legally entitled to use the word "trust" in its corporate name.

The purpose clause, as amended in 1932, is nearly verbatim the language of Section 9850, General Code, which enumerates the powers of title guarantee and trust companies. I am also advised that the company has on deposit with the Treasurer of State securities in the face amount of $50,000.00. Presumably, this deposit was made pursuant to Section 9851, General Code. I am further advised that the company has not acquired banking powers under Sections 710-168 and 710-169, General Code, nor trust company powers pursuant to Section 710-170, General Code.

Section 710-3, General Code, restricts the use of the word "trust" to banks as defined in Section 710-2, General Code. See Opinions of the Attorney General, 1928, Vol. II, page 953. There is a proviso in Section 710-3, supra, which states that

> "* * * Nothing herein shall prevent a title, guaranty and trust company from *continuing* the use of the word 'trust' in its name provided such company *is* qualified to do business under the provisions of Section 9851 of the General Code." (Italics ours.)

Section 710-3, General Code, was originally enacted in 1919. (108

O. L., Pt. 1, 80, 81). The language above quoted was added by an amendment in 1920. (108 O. L., Pt. 2, 1191). It will be noted that these acts were passed several years before the original incorporation of the X Company and that the statutory amendment referred to was made some twelve years prior to the acquisition by the X Company of title guarantee and trust company powers. The question thus arises whether the Legislature in the 1920 amendment did not preclude a guarantee title and trust company organized after the effective date of such amendment from using the word "trust" as part of its name.

In construing Section 710-3, General Code, it must be remembered that it is a penal section, since it imposes a penalty of One Hundred ($100.00) Dollars for each day on which a violation is committed or repeated, and authorizes the superintendent of banks to institute an action for the recovery of such penalty.

In the case of Inglis v. Pontius, 102 O. S., 140, the section in question was held not violative of the Fourteenth Amendment to the Constitution of the United States or of Sections 1, 16, and 19 of Article I, Ohio Constitution. In that case the court held that under the statutes the designation "investment banker" could not be used legally by a non-banking corporation. The court pointed out that the use of such words as "bank", "banker" and "trust" is a valuable adjunct to a business and that it was entirely proper for the Legislature to limit their use to corporations supervised and regulated in accordance with the banking act.

In Inglis v. Pontius, supra, the court said, with reference to Section 710-3, supra, at pages 148-149:

> "Penal statutes, or those which restrain the exercise, regulate the conduct, or impose restrictions upon any lawful trade, occupation or business, should be strictly construed, and their scope should not be extended to include limitations not clearly expressed in their terms. Neither should a statute defining an offense be extended by construction to persons not included within its descriptive terms. In all other respects the general rules of construction applicable to remedial statutes have equal application to penal statutes; that is to say, they are to be fairly construed according to the expressed legislative intent without resort to verbal niceties or technicalities. There should not be any forced construction to exclude from their operation persons who are plainly within their terms; statutes designed to prevent fraud should be so construed as to prevent the evil aimed at. Strict construction does not override the requirement that words are to be given their usual and ordinary meaning and that the purpose and intention of the lawmaker should be carried into effect. It

is an aid in ascertaining the legislative intent to consider the existing evil which it is intened to remedy.

The foregoing rule has been stated with some particularity and at some length because in the instant case counsel entertain widely different views and the decisions of the judges of the lower courts are widely divergent.

It cannot be doubted that gross frauds are daily practiced upon the public by the sale of worthless securities. Neither can it be doubted that the improper use of the words 'bank' and 'banker' can be made a valuable aid in such practices."

It is necessary to consider the effect of the word "continuing" in the portion of Section 710-3 above quoted. *Webster's Twentieth Century Dictionary* defines "continue" as "to remain in a state or place; * * * to stay" and also "to retain; to allow or permit to remain; to allow to live." Clearly a corporation could not "retain" a name which it had not previously used. As I construe the statute the Legislature, speaking in 1920, said that a title guarantee and "trust" company already using the word "trust" might continue to do so, but if any such corporations should be thereafter organized they could not use the word "trust".

As stated in *1 Lewis' Sutherland, Statutory Construction* (2nd Ed.), Sec. 183, p. 324, "An act speaks from the time it takes effect." An exception in a statute of injuries "already sustained" was held to refer to the time the act took effect. *Jackman* v. *Garland,* 64 Me., 133. A similar construction was given to a statute containing the words "now existing". *Barrows* v. *People's Gas Light and Coke Co.,* 75 F., 794. Under such construction the word "is" in the proviso of Section 710-3, supra, refers to corporations qualified under Section 9851, General Code, at the time Section 710-3 became effective.

The exception in Section 710-3, General Code, concerning title guarantee and trust companies, is a proviso to the general provision limiting the use of the word "trust" to corporations regulated under the banking act. Such an exception to a general provision includes only those cases clearly within its terms. *Bruner* v. *Briggs,* 39 O. S., 478; *State, ex. rel.* v. *Andrews,* 105 O. S., 489; *State, ex rel.* v. *Forney,* 108 O. S., 463; *2 Lewis' Sutherland, Statutory Construction* (2nd Ed.), Sec. 352, pp. 673-677. I am of the view that this proviso clearly includes within its terms only those title guarantee and trust companies which were using the term "trust" at the time Section 710-3, General Code, became effective. Such construction is in harmony with the purpose of the statute as discussed in *Inglis* v. *Pontius, supra.*

Specifically answering your inquiry it is my opinion that Section 710-3, General Code, prohibits a title guarantee and trust company organ-

ized after the effective date of such section from using the word "trust" as a designation or name under which its business is conducted.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5919.

APPROVAL—LEASE TO LAND IN VILLAGE OF HAMDEN, VINTON COUNTY, OHIO—CITY OF WELLSTON, OHIO.

COLUMBUS, OHIO, August 3, 1936.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease in triplicate executed by the state of Ohio through you as Conservation Commissioner, acting as the authorized and designated agent of the Conservation Council of Ohio, by which there is leased and demised to the village of Hamden, Vinton County, Ohio, the use of a four-inch cast iron pipe extending from the water plant of the city of Wellston, Ohio, to Lake Alma, a distance of approximately 4,000 feet, and also a right of way for pipe line maintenance purposes in and upon certain lands of the state which it now holds under a lease for the term of ninety-nine years, renewable forever, executed to it by the city of Wellston, Ohio.

This lease, which is one executed by the Conservation Council for and in the name of the state of Ohio under the authority conferred upon that body by Section 472-1, General Code, has been properly executed and acknowledged by you, acting as the designated agent of the Conservation Council, and by the authorized officers of the village of Hamden, Ohio, acting pursuant to the authority of a resolution of the Council of said village.

The lease has also been approved by the Governor, as is required by the provisions of the section of the General Code above referred to. I am also approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
JOHN W. BRICKER,
Attorney General.