

2256.

INVESTMENT BY OHIO BANKS—BONDS OR OTHER OBLIGATIONS OF ANY CITY, TOWN, COUNTY OR OTHER LEGALLY CONSTITUTED POLITICAL OR TAXING SUBDIVISION IN A FOREIGN STATE—NOT DIRECT OBLIGATIONS OF ISSUING DISTRICT, WHERE FULL FAITH AND CREDIT OF ENTIRE DISTRICT NOT PLEDGED, MAY NOT BE LEGALLY APPROVED FOR INVESTMENT BY SUPERINTENDENT OF BANKS, UNLESS FULL COMPLIANCE WITH ALL REQUIREMENTS AND CONDITIONS, SECTION 710-111, PARAGRAPH (e) G. C.

SYLLABUS:

*The Superintendent of Banks may not legally approve for investment by Ohio banks, bonds or other obligations of any city, town, county or other legally constituted political or taxing subdivision situated in a state other than Ohio, which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, unless such subdivision or district complies fully with all the requirements and conditions set forth in paragraph (e) of Section 710-111 of the General Code.*

Columbus, Ohio, May 10, 1940.

Honorable Rodney P. Lien, Superintendent of Banks,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your communication reading as follows:

“At the last session of the General Assembly, Section 710-111 of the General Code was amended, effective July 24, 1939. The particular amendment of this section in which your attention is directed, is to be found in sub-paragraph (e) of said section, which as so amended reads as follows:

‘Bonds or other obligations of any city, town, county, or other legally constituted political or taxing subdivision situated in one of the other states of the United States, or any cities of the Philip-pines, Hawaii or Porto Rico, which city, town, county, or taxing

subdivision has been in existence ten years and which for a period of ten years previously has not defaulted for a period of more than ninety days in the payment of any part of either principal or interest of any debt contracted by it and whose net indebtedness after deducting the amount of its water bonds and bonds issued for other self-sustaining public utilities and the amount of sinking funds which are available for the payment of its bonds or obligations other than water bonds and self-sustaining public utilities, does not exceed ten per cent of the value of taxable property in such city, town, county, or political or taxing subdivision to be ascertained by the valuation of property therein for the assessment of taxes next preceding such investment, provided, that no bonds or other obligations of any such county shall be eligible for investment unless such county has a population of not less than ten thousand inhabitants, and provided, that no bonds or other obligations of any such city, town, or political or taxing subdivision shall be eligible for investment, unless such city, town or political or taxing subdivision has a population of not less than one thousand inhabitants as ascertained by United States or state census or by any municipal census taken by authority of the state next preceding such investment, and, provided, further, that there shall be eligible hereunder the bonds or other obligations of a political or taxing subdivision which has not been in existence for ten years, but which is erected out of another eligible subdivision or comprises in whole or in part another eligible subdivision or subdivisions or parts of eligible subdivisions if such subdivisions shall comply with the other requirements of this paragraph. Nothing herein contained shall authorize the investment of funds in any special assessment or improvement bonds or other bonds or other obligations which are not the direct obligations of the district issuing same and for which the full faith and credit of the entire district are not pledged, *unless such investment be approved by the superintendent of banks.*

(Underscoring the writer's.)

While the wording in said sub-paragraph (e) underscored, to-wit:

'unless such investment be approved by the superintendent of banks'

does not, I believe, appear in italics in the original act, nevertheless it is new matter inserted by amendment by the Senate Committee on Banks and Banking.

The question has arisen in giving proper construction of said amendment as to whether or not the Superintendent of Banks may after the effective date thereof, approve investment in bonds or other obligations which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, unless such bonds or other obligations meet all the requirements contained in said subparagraph (e) relative to the investment in bonds or other obligations which are the

direct obligations of the issuing political or taxing subdivision and for which the full faith and credit of such district are pledged.

I would, therefore, appreciate your opinion as to whether or not under said sub-paragraph (e) as so amended I may legally approve for investment bonds or other obligations which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, if such bonds or obligations do not comply with the other requirements of said sub-paragraph (e) applicable to investments in bonds of any city, town, county or other legally constituted political or taxing subdivision situated in a state other than Ohio and which are the direct obligations of the same and for which the full faith and credit of such city, town, county or other legally constituted political or taxing subdivision are pledged."

The title of Section 710-111 of the General Code reads: "Securities in which investments may be made"; and in Opinions, Attorney General, 1926, Vol. I, p. 225, a former Attorney General made the following observation about this law:

"Whether the certificates in question constitute a legal investment depends entirely on whether the statute includes them. As pointed out in the former opinion, the statute there in question enumerated fifteen types of securities in which savings banks might invest their funds. Applying the maxim *expressio unius est exclusio alterius*, it was concluded that a savings bank could not invest in securities other than those enumerated."

This view is based upon the first branch of the syllabus in the case of *Ulmer vs. Fulton*, 129 O. S. 323, which reads:

"Banks and trust companies 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."

Therefore, we can accept as settled the proposition that the list of securities in which a bank may legally invest cannot be extended by construction to include securities which are not within the descriptive terms of the statute. Since the statute places definite and rigid limits upon legal investments, it is apparent that as new types of bonds, notes or debentures are created, the Legislature must amend the statutes from time to time to allow banks to invest in new securities. The history of Section 710-111 of the General Code indicates that such changes have been made. Prior to 1919 the section of the General Code devoted to bank investments was Section 9758, paragraph (d), which stated that banks could invest in:

"the legally issued bonds or interest-bearing obligations of any city, village, county, township, school district or other district or political subdivision of this or any other state or territory of the United States or Canada."

In 108 O. L., Pt. I (1919), beginning at page 80, the entire law relating to banks was revised and codified, and Section 710-111 designated the securities in which a bank could invest its funds. Paragraph (d) of this section read as follows:

"Bonds or other interest-bearing obligations of any county, town, township, city, school district, improvement district or sewer district, or other organized or political subdivision in this state."

Paragraph (e) of the same section read substantially as quoted in your letter, omitting the words "unless such investment be approved by the Superintendent of Banks." It is noted that paragraph (d) made no provision for investment in any bonds which were not the direct obligations of the issuing district and for the payment of which the full faith and credit of the entire district was not pledged.

Paragraph (e) provided specifically:

"But nothing herein contained shall authorize the investment of funds in any special assessment or improvement bonds or other bonds or other interest bearing obligations which are not the direct obligations of the district issuing same and for which the full faith and credit of the entire district are not pledged."

Section 710-111 was amended in the following sessions of the Legislature: In 111 O. L. (1925), p. 94, no change was made in paragraphs (d) or (e). In 115 O. L. (1933), p. 468, no change was made in these paragraphs and likewise in 115 O. L. (Pt. 2), p. 284, no change was made. In 117 O. L. (1937-1938), p. 417, paragraph (d) was amended to read as follows:

"Bonds or other \*\*\* obligations of any county, town, township, city, school district, improvement district or sewer district, or other organized or political subdivision in this state, *provided, however, that no investment shall be made in any special assessment or improvement bonds or other bonds or obligations which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, unless such investment be approved by the superintendent of banks.*"

By this amendment revenue bonds and special assessment bonds issued

in this state became eligible for bank investment if approved by the Superintendent of Banks. Similar bonds issued by any city, town, county or other legally constituted political or taxing subdivision situated in one of the other states of the United States, etc., remained ineligible; the specific provision against such investment stood unchanged as part of paragraph (e).

In 118 O. L. (1939), Amended Senate Bill 71, the last sentence of paragraph (e) was amended to read:

“\*\*\* Nothing herein contained shall authorize the investment of funds in any special assessment or improvement bonds or other bonds or other obligations which are not the direct obligations of the district issuing same and for which the full faith and credit of the entire district are not pledged, unless such investment be approved by the superintendent of banks.”

This language removed the restriction on assessment and improvement bonds issued by legally constituted political or taxing subdivisions, situated in one of the other states of the United States, and thereby gave to the bonds issued under the authority of paragraph (e) the same latitude as those issued under authority of paragraph (d). However, the approval of the Superintendent of Banks did not eliminate the definite conditions and qualifications imposed upon the issuing district by paragraph (e). These specific limitations remained unchanged by amendment and to rule that such limitations no longer applied would extend the amendment beyond the actual language of the statute.

The history of paragraphs (d) and (e) shows that through amendment the class of political subdivisions remained unchanged, although the type of bonds eligible for bank investment issued by such subdivisions or districts was extended to include special assessment and revenue bonds if approved by the superintendent. But nowhere has the Legislature expressed a modification or removal of the restrictions placed upon the class of subdivision or district which issues such bonds.

Therefore, I am of the opinion that the Superintendent of Banks may not legally approve for investment by Ohio banks, bonds or other obligations of any city, town, county or other legally constituted political or taxing subdivision situated in a state other than Ohio, which are not the direct obligations of the district issuing the same and for which the full faith and credit of the entire district are not pledged, unless such subdivision or district

complies fully with all the requirements and conditions set forth in paragraph (e) of section 710-111 of the General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.