of the Department of Industrial Relations, certain office space in Columbus, Ohio, as follows:

Lease from Builders Market, by Converse, Fulton & McAllister, Agents, for the third floor of the building situated at 240 North High Street, Columbus, Ohio. This lease is for a term of ten months, beginning on the first day of March, 1930, and ending on the thirty-first day of December, 1930, by the terms of which the State will be required to pay two hundred and twenty-five dollars ($225.00) per month on the first day of each and every month in advance.

There has been submitted encumbrance estimate No. 1061, which contains the certificate of the Director of Finance to the effect that funds are available for the payment of said rents.

Finding said lease in proper legal form, I hereby approve it as to form and legality and am returning it herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1678.

BANKING BUSINESS—SPECIFIC CORPORATION SOLICITING AND RECEIVING DEPOSITS AND ISSUING PROMISSORY NOTES TO SECURE FUNDS FOR A WORKING CAPITAL.

SYLLABUS:

What constitutes doing a banking business under Ohio laws discussed.

COLUMBUS, OHIO, March 26, 1930.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

> "Your opinion in the following matter is respectfully requested:
>
> XY, a corporation, organized under the laws of the State of Ohio for the purpose of making loans upon chattels or pledges of personal property to the limit of $300.00 per loan, mostly payable in monthly installments with power to buy and sell open accounts, bonds, debentures and choses in action; to borrow money for its use in its corporate business and to issue debt obligations, providing for periodical installment payments, etc.
>
> Borrowers of the company are solicited, while in the office of the KY company, to purchase five or six per cent notes in denominations of $100.00 and multiples thereof. These notes may be paid in full at the time of the purchase or on the installment plan, terms made for each individual case (copy of note attached.)
>
> The holder of the note may cash it for the principal sum and accrued interest at 5% by giving thirty day notice to the corporation. When notes are purchased on the installment plan the deposits are entered in a pass book (copy attached, marked Exhibit A) and the purchaser receives 5% interest on such deposits on a per annum basis.
>
> The funds so obtained are used as working capital in the conduct of the business of the XY Corporation.

Is this method of transacting business the conducting of a banking business, as defined by the General Code of Ohio?"

Copy of note:

"UNITED STATES OF AMERICA
STATE OF OHIO

FIVE YEAR 6% NOTE
Series of 1929

Number	Amount
	$500

XY CORPORATION
Of Columbus
(An Ohio Corporation)

FOR VALUE RECEIVED, this Corporation promises to pay to the registered holder hereof, the sum of

FIVE HUNDRED DOLLARS

($500) in gold coin of the United States of America of or equal to the present standard of weight and fineness at the office or agency of the Corporation, on the 30th day of June, 1934, unless sooner redeemed, with interest in the meantime at the rate of six per cent (6%) per annum, payable semi-annually on the 1st day of January and July of each year from date hereof, at said office or agency of the Corporation.

This note is one of the authorized issue of notes of the Corporation known as its Five Year 6% Notes, Series of 1929, numbered 1 to----------, inclusive, all dated June 30, 1929.

The Corporation shall have the right to redeem this note at par plus accrued interest from date of last payment to date of redemption, upon thirty (30) days written notice to the holder hereof. The holders of all notes of this Series collectively shall have a lien upon the assets of the Corporation prior to all other obligations except direct loans, with interest thereon, obtained by the Corporation from any bank, banker or trust company.

The registered owner of this note may cash it for its principal sum and accrued interest at any time, after giving thirty (30) days written notice, to the Corporation.

IN WITNESS WHEREOF the Corporation has caused this note to be hereunto signed by its president or vice-president and the corporate seal to be hereto affixed and attested by its secretary or assistant secretary the ------day of----------, 19----

---

Vice-President

ATTEST:

Assistant-Secretary

FOR VALUE RECEIVED, the undersigned hereby assigns unto----------
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the within note and all rights thereunder, subject to the conditions and terms thereof, and authorizes transfer of title thereto on the books of the Corporation.
Dated at ---------- this ---------- day of ---------- 19----.
Witness:
---------- (SEAL)

For the purposes of this opinion, it is well to keep in mind certain facts set forth in your communication as to the method of the XY Corporation in conducting its business, that is, that customers of the company are solicited while in the office to purchase the notes of the company, and that, when notes are purchased on the installment plan, five per cent interest is paid on deposits which is applied to the purchase of the notes and that the funds so obtained are used as working capital in the conduct of the business of the XY Corporation.

A similar question to the one which you present was passed upon on March 12, 1929, in Opinion No. 184 addressed to the Superintendent of Banks. In that opinion I reaffirmed an opinion of the Attorney General in 1925 published in the Opinions of the Attorney General, 1925, p. 358, which opinion contains the following language:

> "Section 710-2, General Code of Ohio, provides as follows:
> 'The term "bank" shall include any person, firm, association, or 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 pass-book, a note, a receipt, or other writing, and unless the context otherwise requires as used in this act includes commercial banks, savings banks, trust companies and unincorporated banks, provided that nothing herein shall apply to or include money left with an agent pending investment in real estate or securities for or on account of his principal; nor to building and loan associations or title guarantee and trust companies incorporated under the laws of this state. All banks, including the trust department of any bank, organized and existing under laws of the United States, shall be subject to inspection, examination and regulation as provided by law."
>
> This section defines the term 'bank' and the exceptions to the rule. It also provides that all banks shall be subject to examination and regulation.
>
> Your question will naturally turn upon the point as to whether such a corporation is soliciting, receiving, or accepting money or its equivalent on deposit as a business.
>
> In the case of *The Security and Bond Deposit Company* vs. *the State, ex rel., Seney,* 105 O. S. page 113, the corporation was soliciting and accepting the deposit of liberty bonds with such corporation and was paying thereon interest in addition to the interests accruing upon bonds and was using the money derived from the pledges from said bonds to carry on the business of making loans to customers. A suit was brought in quo warranto to oust the company from doing business on the ground that such corporation had offended against the laws of the state, misused its corporate authority, franchise and privileges, and assumed franchises and privileges not granted to it, in the particulars that it had unlawfully been carrying on a general banking business and had unlawfully solicited, received

and accepted money or its equivalent on deposit, as a business, and had issued therefor its certificates of deposit, pass-book, note, receipt or other writing, and had unlawfully assumed and exercised powers granted to banking corporations.

The court held:

'The company incorporated under the laws of this state for the purpose of "contracting for and buying and selling securities and bonds, also borrowing and loaning on same; and making loans on real estate securities, "is not authorized to engage in a banking business and where such company solicits and receives government bonds, on deposit at its established place of business in this state, agreeing to return same or like bonds upon call, or at a time agreed upon, paying therefor a stipulated rate of interest in addition to that called for by the coupons attached thereto, its announced purpose being to use the same as collateral to borrow money which shall constitute its working capital, such transactions are beyond its authority and will be enjoined.'

On page 121 of the opinion, Matthias, Judge, says:

'The relation of the defendant and its depositor is that of debtor and creditor rather than bailor and bailee, being substantially the relation of a bank and its depositor. * * *

At least to the extent of soliciting and receiving such deposits the defendant is engaged in the banking business, and in that respect is acting without authority.'

In the situation presented in your communication, the mortgage company is soliciting the deposit of money or its equivalent to be used by it in the carrying on of its business and issuing to the depositor a certificate of indebtedness payable at a certain stipulated time, and this would seem to bring the mortgage company within the rule laid down in *Security Company* vs. *the State, supra.* The relation between the mortgage company and the depositor is that of debtor and creditor and substantially the relation of bank and its depositor.

It is, therefore, my opinion that the corporation as set out in your communication to the extent of soliciting and receiving such deposits and issuing such certificates of indebtedness is engaged in a banking business.'

Section 710-2, supra, is very broad and includes

"The term 'bank' shall include any * * * corporation soliciting, receiving or accepting money * * * on deposit as a business whether such deposit is * * * evidenced by * * * a note, * * * or other writing."

The General Code does not specifically define the word "deposit; it does so only by implication in Section 710-1 in which "time deposits" and "demand deposits" are both defined. It should be kept in mind that "deposit" as there used is to be strictly construed to include only bailments of money and not loans made by or to a bank as those powers are elsewhere conferred by the statute.

The weight of authority seems to be that the act of one who parts with the possession of money, but retains control over the money and may regain it at will, or as in the case which you present within thirty days, constitutes a deposit rather than a loan.

It will be noted that the certificate of indebtedness in the case which you present provides that

"The registered owner of this note may cash it for its principal sum and accrued interest at any time, after giving thirty (30) days written notice, to the Corporation."

It will be noted, therefore, that the purchaser of the note retains control over the fund which he has deposited in the loan company for the purchase of the note.

I can find no definition in the General Code of Ohio of the word "loan" or of the word "deposit". But our courts have defined both of these terms. In the case of *State* vs. *Buttles,* 3 O. S. 309, the question was as to whether a transaction was a loan or a deposit, in view of the instrument set forth on page 312. The court, per Ranney, J., said:

"We can entertain no doubt that the money advanced to the insurance company was, in substance, and legal effect, a loan, which, upon its face, established the relation of lender and borrower between the state and the company. The instrument, it is true, recites that the sum has been deposited with the insurance company, and that it is to be repaid as specified in other parts of the bond. But the whole instrument, taken together, most clearly shows that it was to, and did, become the money of the company, and constitutes the 'value received', for which the company undertook to pay the sum of one hundred thousand dollars two years thence, with interest.

"The fund could not be withdrawn at the will of the state; it was not placed with the company for safe keeping or transmission; but the clear and manifest object was to enable the company to obtain the use of the money for a long period of time, to be used, controlled, and treated as its own, and the state to derive a profit from its use."

You will note from the above that the fund was not within the control of the holder of the note and the transaction was a loan. The proceedings in this case in the trial court are reported in 10 W. Law J., 309. There the court drew a firm distinction between a deposit and a loan, the difference being as to whether or not the holder of the instrument retained the right to demand the money. If such right was retained, the transaction was a deposit; otherwise, a loan. On page 312, I find this discussion:

"When a party having a sum of money confides it to another, who is to return to him, not the same money, but a like sum, when demanded, the transaction is a deposit, as that term is ordinarily understood in commercial language. It is not a technical bailment. It creates simply the relation of debtor and creditor. The creditor having the right at any time to withdraw the whole or any part of the fund. It is said to be in the nature of a gratuitous loan.

"Whenever the transaction embraces any other terms or conditions, it ceases to be a simple deposit. If the fund can not be withdrawn at the will of the creditor, but is to remain for a certain period, it becomes a gratuitous loan. If it is to be repaid with interest, it becomes a loan upon interest.

"A writing which acknowledges that a sum of money has been deposited by a party and that it is subject to his order, is evidence of a present liability to pay the amount specified, or in other words, is a certificate of deposit. If, however, it acknowledges that a sum of money has been de-

posited and that it is payable to order or bearer, at a future day, with interest, these conditions destroy its character as a certificate of deposit, and it becomes in legal effect a negotiable promissory note; and its terms show that the consideration is money loaned."

The distinction made by the Ohio courts is discussed in the case of *Curtis* vs. *Leavitt,* 15 N. Y. 9, 264, 265, where the court said:

"The distinction, which thus plainly exists between a certificate of deposit and a promissory note, demonstrates the existence of a similar distinction between receiving a deposit, and other methods of borrowing. If the appropriate written evidences of two transactions materially differ, there must be a corresponding difference between the transactions themselves. Let us recur for a moment to the origin of banks of deposit. They were places where the various individuals of a commercial community could deposit for safe keeping those small sums which they must necessarily keep on hand to meet any sudden or unexpected demand. As neither all, or any considerable number of the depositors were likely to call for their deposits at the same time, the bank could safely use a large portion of the money. But as the depositors could not, in general, foretell when their respective shares would be wanted, it was indispensable that they should be at liberty to call for the money at any time. It will be seen, therefore, that it was essential to the very nature of a bank deposit that it be kept always ready to meet the wants of the depositors. Agreeing to pay interest, or giving security for the money deposited, were neither of them at all inconsistent with the object of the arrangement; but to specify a time of payment clearly was so. It at once converted the transaction into an ordinary loan. Now what a bank deposit was in its origin, I apprehend it is still. Money on deposit means, *ex vi termini*, money placed where the owner can command it at any time. A person may loan money to a bank for a specified time, as well as to an individual, provided the bank is authorized to borrow. But such a loan is not a deposit. That which makes the distinction between them plainly is, that the money in one case must be kept always ready, while in the other a day of payment is fixed."

In the case of *State* vs. *McFetridge*, 84 Wis., 473, the judgment turned on the question as to whether a public official had deposited public money in his possession, as the statute required, or had invested it without warrant and so lost control over it. In discussing this question the court said, page 515:

"The distinction made between a general deposit of money in a bank payable at any time on demand, and an investment of such money, is plain and substantial. By such a deposit the depositor does not lose control of the money, but may reclaim it at any time. True, he loses control of the specified coin or currency deposited, but not of an equal amount of coin or currency having the same qualities and value, which, as we have seen, is all that is required of him. But if the funds in the treasury are invested in United States or state bonds, or in loans on time to counties, cities, etc., the treasurer loses control thereof, and the same cannot be replaced in the treasury until such bonds are paid or sold, or such loans become due, and are collected by due course of law. The retention by the treasurer of substantial control over the funds in the one case and his loss of such

control in the other, mark the leading distinction between a mere deposit of the funds and an 'investment' thereof, as those terms are used in statutes."

In discussing the question of loan and deposit, it has been held by a Pennsylvania court, cited in 14 L. R. A., 103:

"Was this transaction with the Bank of America a deposit of the money, or was it a loan or investment of it? A deposit is where a sum of money is left with a banker for safe-keeping, subject to order, and payable, not in the specific money deposited, but in an equal sum. It may or may not bear interest, according to the agreement. While the relation between the depositor and his banker is that of debtor and creditor simply, the transaction cannot in any proper sense be regarded as a loan, unless the money is left, not for safekeeping, but for a fixed period at interest, in which case the transaction assumes all the characteristics of a loan."

In view of these authorities, I have reached the conclusion that in the case which you present for my consideration the transaction between the purchaser of the note and the loan company creates a relationship of debtor and creditor, and that inasmuch as the purchaser retains control over the funds in that he may withdraw the same within thirty days after giving notice, the transaction becomes a deposit and comes within the provisions of Section 710-2, General Code.

In view of the foregoing and in specific answer to your question, I am of the opinion that the corporation described in your communication to the extent of soliciting and receiving such deposits and issuing its promissory notes for the purpose of securing funds as a working capital in the conduct of its business is in the banking business.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1679.

APPROVAL, ABSTRACT OF TITLE TO LOTS OWNED BY JOHN W. HAVENS, IN CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, March 27, 1930.

HON. CARL E. STEEB, *Business Manager, Ohio State University, Columbus, Ohio.*

DEAR SIR:—You recently submitted to me for my examination and approval a number of abstracts of title, warranty deed form, encumbrance estimate No. 246, and other files relating to the proposed purchase by the State of Ohio of lots Nos. 1, 2 and 3 of Critchfield & Warden's Subdivision of the south half of the north half of lot 278 of R. P. Woodruff's Agricultural College Addition to the city of Columbus, Ohio, as the same are numbered and delineated on the recorded plat thereof, of record in plat book 4, page 254, Recorder's Office, Franklin County, Ohio; and also of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of John W. Burton's Subdivision of the north half of the south half of lot 278 of R. P. Woodruff's