

and not an official act, and there is no statutory inhibition against the sale of such marriage certificates.

2. In the event that such marriage certificates are sold to the public by the person filling the office of Probate Judge, and are purchased voluntarily, the remuneration received could not be recovered for the use of the county treasury.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2597.

DEPOSITS—TAXABLE IN BANK UNDER CONSERVATORSHIP WHEN
—CONSERVATOR AUTHORIZED TO PAY SUCH TAXES AND DE-
DUCT SAME FROM DEPOSITOR'S RESTRICTED ACCOUNT.

SYLLABUS:

When there are deposits in a banking institution, which has been placed in the custody of a conservator, pursuant to the authority of Section 710-88a, General Code, on the day fixed by the Tax Commission of Ohio for listing deposits, at which time such deposits were restricted by order of the Superintendent of Banks, pursuant to the authority contained in Section 710-107a, General Code, such conservator is authorized by reason of the provisions of Section 5673-1 and 5673-2 General Code to pay such taxes and charge or deduct from the restricted account of each such depositor an amount equal to the tax paid by him thereon.

COLUMBUS, OHIO, April 30, 1934.

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

DEAR SIR:—I am in receipt of your request for my opinion, which reads:

"With especial reference to Sections 5673-1, 5673-2, 5406 and 5324, each of the General Code of Ohio, I would appreciate your opinion as to whether or not deposits in banks under conservatorship on the day fixed by the Tax Commission of Ohio for the listing of deposits, and the payment of which said deposits was restricted by order of the Superintendent of Banks, are subject to taxation. If so, am I correct in the assumption that the Conservator should charge the restricted account of each such depositor with an amount equal to the tax thereon?"

Section 5324 General Code defines deposits as follows:

"The term "deposits" as so used, includes every deposit which the person owning, holding in trust, or having the beneficial interest therein is entitled to withdraw in money, whether on demand or not, and whether evidenced by commercial or checking account, certificate of deposit, savings account or certificates of running or other withdrawable stock, or otherwise, excepting (1) unearned premiums and surrender values under policies of insurance, and (2) such deposits in financial institutions out-

side of this state as yield annual income by way of interest or dividends in excess of four per centum of the principal sum so withdrawable."

Section 5673-1 G. C. referred to in your letter, makes taxes on deposits in a financial institution thereon a lien on such deposits.

Section 5673-2, referred to in your inquiry, authorizes the financial institution to deduct taxes paid by it, from the deposits in the financial institution.

Section 5406 G. C. in substance and in so far as is material to your inquiry, provides that deposits, as defined in Section 5324 G. C., shall be returned for taxation by the financial institution.

Since your inquiry is more specifically whether a conservator, created or appointed pursuant to the authority of 710-88a G. C. is required to make a return of deposits in its custody for taxation, it is necessary to consider the question as to whether he is a financial institution within the meaning of the Ohio classified property tax law.

Section 5407 G. C. reads as follows:

"The term "financial institution" as used in this chapter includes every person who keeps an office or other place of business, in this state and engages in the business of receiving deposits, and of lending money, buying or selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit. Provided that corporations or institutions organized under the provision of the act of congress, known as the federal farm loan act, approved July 17, 1916, and amendments thereto, and insurance companies, shall not be considered financial institutions or dealers in intangibles within the meaning of this chapter."

The powers, rights and duties of a conservator are set forth in Section 710-88a in part as follows:

"The conservator so appointed shall take possession of the business and property of such bank and under the supervision of the superintendent and subject to such limitations as the superintendent may from time to time impose, shall have and exercise in the name and on behalf of such bank all the rights, powers and authority of the officers and directors of such bank and all voting rights of the shareholders thereof and may continue its business in whole or in part with a view to conserving its business and assets pending further disposition thereof as provided by law. Nothing herein contained shall be so construed as to vest title to any of the assets of such bank in the conservator so appointed."

From the foregoing statutes, it is apparent that a conservator of a banking institution in Ohio, under the direction of the Superintendent of Banks, has the authority to operate the bank, as a bank, subject to such restrictions and limitations as may be imposed by the Superintendent of Banks.

The authority of the statute for the creation of "restricted accounts" is contained in Section 710-107a:

"The superintendent of banks, whenever he is of the opinion that such action is necessary for the protection of the interest of the depositors and other creditors of any bank under his supervision and that

such action is in the public interest, may order such bank forthwith to suspend the payment in any manner of the liabilities of such bank to depositors and other creditors except as hereinafter provided. Such order shall become effective upon receipt by such bank of notice thereof and shall continue in full force and effect until released or modified by the superintendent of banks in writing, but in no event to exceed a period of sixty days; provided that such suspension may be extended for further periods not to exceed sixty days each upon order of the superintendent of banks. Nothing herein contained shall effect the right of such bank to pay its current operating expenses and any other liability incurred during such suspension. Whenever in the judgment of the superintendent of banks the condition of such bank warrants such action, the liabilities, the payment of which have been so suspended, may be paid by such bank in whole or pro rata in part, upon such terms and conditions as the superintendent of banks shall prescribe.

From such section it is evident that the order of the Superintendent of banks restricting deposits, could have no effect on an account payable on demand, other than to suspend the time of payment for a period or periods of 60 days.

It shall be noted in Section 5324, General Code, that the term "deposits" is not limited to deposits payable on demand. The language of the statute is that the depositor "is entitled to withdraw any money, whether on demand *or not*."

I am unable to find any language in Section 710-107a, General Code, which authorizes the conservator to pay such deposits in other than money or to give him any other authority than to suspend the present right of withdrawal to a future date.

Specifically answering your inquiry, it is my opinion that; when there are deposits in a banking institution, which has been placed in the custody of a conservator, pursuant to the authority of Section 710-88a, General Code, on the day fixed by the Tax Commission of Ohio for listing deposits, at which time such deposits were restricted by order of the Superintendent of Banks, pursuant to the authority contained in Section 710-107a, General Code, such conservator is authorized, by reason of the provisions of Section 5673-1 and 5673-2, General Code, to pay such taxes and charge or deduct from the restricted account of each such depositor an amount equal to the tax paid by him thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2598.

OFFICES COMPATIBLE—MEMBER CITY BOARD OF EDUCATION AND
MAYOR IN ABSENCE OF CHARTER PROVISION.

SYLLABUS:

A member of the city board of education may at the same time hold the office of mayor of the said city, in the absence of a charter provision with respect thereto.