possible charge against the land, except costs; hence it must be concluded that the General Assembly omitted costs advisedly.

It is likewise patent that one of the purposes of the section was to carry to the purchaser a title divested of all claims of the State for any arrearages of taxes, assessments, penalties and interest which might remain after applying the amount for which the land was sold. It was within the power of the General Assembly to have tacked the costs made on foreclosures to the taxes, assessments, penalties and interest, inasmuch as the treasurer had a judgment lien therefor, but it did not do so, and I must conclude it did not intend so to do.

It is my opinion that the costs made in foreclosure proceedings do not follow through the forfeited land sale.

The question follows as to how the costs on foreclosures may be recovered by those entitled to them. Each party is primarily liable for his own costs. That is, for the costs made at his instance. 11 O. J., Sec. 72. I assume that the treasurer made all the costs in the foreclosure proceedings. I further assume that he recovered a judgment for them, but he failed to recover on his judgment, consequently I would say that he would have to pay the costs by him made out of the county treasury, and in the absence of legislative direction, from the general fund thereof, and I take it that this view of the law answers your third question.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

311.

TITLE GUARANTY AND TRUST COMPANIES—USE OF TERM "TRUST" IN FIRM NAMES, PERMITTED, WHEN—NOT RESTRICTED AS BANKS.

SYLLABUS:

Title guaranty and trust companies have a right to use the word "trust" in their firm names, whether or not they had already used that word when the Bank Act was passed, as recodified, in 1919.

The restriction of the use of the word "trust", under Section 710-3, *General Code, to banks, as defined in Section* 710-2, *does not apply to title guaranty and trust companies, since they are specifically excepted. Thus there is a statutory distinction between the requirements for banks and trust companies and those for title guaranty and trust companies; so that while the former companies must qualify with those requirements or forego the use of the word "trust", and other companies not qualified*

as banks or trust companies are also prohibited from such use, or any similar designation, title guaranty or trust companies, may continue to use or adopt anew the word "trust." (Opinion No. 5918, renderd August 24, 1936, of the Opinions of the Attorney General for 1936, overruled.)

COLUMBUS, OHIO, March 23, 1937.

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

DEAR SIR: This is in reply to your recent letter, which reads as follows:

> "On August 3, 1936, your predecessor in response to a request made by the undersigned, rendered Opinion No. 5918 and in view of this opinion I wrote him on August 13, 1936, with reference to the General Title and Trust Company, a corporation transacting business in Cleveland, Ohio, a copy of said communication being enclosed herewith.
>
> I believe that the law firm of Tolles, Hogsett & Ginn, 1759 Union Trust Building, Cleveland, Ohio, submitted to the then Attorney General a brief relative to the question involved in said opinion No. 5918, a copy of which in all probability may be found in your files, together with the reply thereto of the Attorney General.
>
> May I request that you examine your office file pertaining to this matter and give the same such attention as in your opinion it requires."

In response to your letter, a study of the subject raised by it has been made.

The central interrogatory here posed and considered is: Does a title guaranty and trust company whose purpose clause was amended after the enactment of Section 710-3, General Code, (1919), and of the amendment relative to such companies (1920), have the privilege to use in its firm name the word "trust"? An earlier opinion by John W. Bricker held against such use (No. 5918, August 24, 1936) and that opinion has been here reviewed.

The company presently considered was incorporated under Ohio law in 1925, to transact a mortgage and investment business. The purpose clause, as amended in 1932, is nearly verbatim the language of Section 9850, defining the purposes of such companies. It is accepted that the company, as required by law, deposited with the Treasurer of State the amount of $50,000, to assure payment of its obligations, according to Section 9851. It is not considered that the company, by compli-

ance with the requirements of Sections 710-168 and 710-169, sought to acquire banking powers; nor under Section 710-170, did it acquire trust powers as therein defined.

The central question to be answered arises from an application of Section 710-3. That section reads:

> "The use of the word 'bank,' 'banker,' or 'banking,' or 'trust,' or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business is or may be conducted in this state, is restricted to banks as defined in the preceding section. All other persons, firms, or corporations are prohibited from soliciting, accepting, or receiving deposits, as defined in Section 2 of this Act and from using the word 'bank,' 'banker,' 'banking,' or 'trust' or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business may be conducted in this state. Any violation of this prohibition, after the day when this act becomes effective, shall subject the party chargeable therewith to a penalty of $100.00 for each day during which it is committed or repeated. Such penalty shall be recovered by the superintendent of banks by an action instituted for that purpose, and in addition to said penalty such violation may be enjoined and the injunction as in other cases.
>
> When and how long the word 'trust' may be used—Provided, however, that any corporation now incorporated under the name which includes the word 'trust,' and which is qualified to transact a trust business, may continue the use of such word so long as it complies with the requirements of this act; provided, that every corporation incorporated under a name which includes the word 'trust' and is not qualified to transact a trust business is required to change its name so as to eliminate the word 'trust' therefrom within two years from the date when this act becomes effective, during which period such company shall not be subject to the penalty of this section, but 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."

The provisos of Section 710-3, make three distinct references: (1) "Any corporation now incorporated under the name which includes the word 'trust' and which is qualified to transact a trust business may con-

tinue the use of such words so long as it complies with the requirements of this act: (2) provided, that every corporation incorporated under a name which includes the word 'trust,' and is not qualified to transact a trust business is required to change its name so as to eliminate the word 'trust' therefrom within two years from the date when this act becomes effective * * *"

Those two references are directly to trust companies, which are defined with banks, under Section 710-2:

> "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 passbook, 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 * * *

Thus in effect, trust companies, by Section 710-2, are classified as banks.

Continuing, in its third reference, the section adds:

> "Provided, that nothing herein shall apply to 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."

By the foregoing, banks and trust companies are distinguished from title guaranty and trust companies.

Next following, in Section 710-3, is a restriction as to the use of several business terms. It reads:

> "The use of the word 'bank,' 'banker,' or 'banking,' or 'trust,' or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business is conducted in this state, is restricted to banks as defined in the preceding section."

Then follows a proviso which reads:

> "Provided, however, that any corporation *now incorporated* under the name *which includes the word 'trust,'* and which is *qualified to* transact a trust business, may continue the use of such words so long as it complies with the requirements of this act * * *." (Italics the writer's.)

Then follows a second proviso, which reads:

> "But nothing herein shall prevent a title guaranty and trust company from continuing the use of the word 'trust' in the name provided such company is qualified to do business under Section 9851 of the General Code."

Evidently, in these two provisos, there was a legislative intent to distinguish between "any corporation qualified to transact a trust business" and a title guaranty and trust company, and to set up the divergent restrictions within which they may use the word "trust." The plain reading of the words indicates that rather than an agreement or restriction there is a positive difference.

Supporting this concept of distinction, Section 710-170, prescribes a legal process by which a title guaranty and trust company may become a trust company. The section reads:

> "A title guaranty and trust company heretofore organized and now existing may accept the provisions of this act (G. C. 710-1 to 710-189) and be granted trust company powers provided that it shall qualify and comply with all the requirements herein provided for the organization, conduct and supervision of trust companies; provided also that upon the acceptance of the powers granted under this act, all trust powers heretofore granted to the title guaranty and trust company are thereby revoked."

Of course, a bank or trust company, under Section 710-19 et seq., shall report to and be examined by the state superintendent of banks. On the other hand, Section 710-171, reads:

> "Title guaranty and trust companies shall make such reports to the auditor of state as are required to be made by trust companies to the superintendent of banks, and shall be subject to like examination. * * *"

Section 710-168 states that "a title guaranty and trust company * * * may be granted powers to establish a commercial or a savings bank or a combination of both * * *." After that has been done a change of supervision follows. Thus Section 710-169 reads:

> "When a title guaranty and trust company has complied with the provisions of this act and acquired banking powers herein granted, such company as to business transacted under

powers heretofore granted to such title guaranty and trust company shall thereafter make its reports to and be examined by the superintendent of banks, who shall inspect and supervise such company according to Sections 9850, 9851, 9852 and 9855; and as to the banking powers granted herein it shall be subject to all requirements of this act as to commercial and savings banks."

The section adds:

"A title guaranty and trust company accepting the provisions of this act shall not be subject to the limitations prescribed by Section 9853 of the General Code."

Section 9853 sets forth that:

"Any company so organized shall be limited in its operation to only one county which shall be designated in its charter, except that, if it desires to issue its policies of title insurance in more than one county it may issue them in such other counties upon depositing with the treasurer of state an additional sum of fifty thousand dollars in securities as above provided for each additional county."

Turning to Section 9851, it is observed that the purposes of a title guaranty and trust company, as distinct from those of a bank or trust company, are fully enumerated. The section reads:

"A title guaranty and trust company may prepare and furnish abstracts and certificates of title to real estate, bonds, mortgages and other securities, and guarantee such titles, the validity and due execution of such securities, and the performance of contracts incident thereto, make loans for itself or as agent or trustee for others, and guarantee the collection of interest and principle of such loans; take charge of and sell, mortgage, rent, or otherwise dispose of real estate for others, and perform all the duties of an agent relative to property deeded or otherwise entrusted to it."

Manifestly, this is a specialized business related to titles, real estate, the handling of property as agent, seller, or rent collector, and the acting as trustee. In contra-distinction, a banking business relates to the receiving of moneys on deposit and the custodianship of such moneys.

Re-referring to Section 710-3, it is observed that the language of the first proviso runs:

> "Provided, however, that any corporation *now incorporated* under the name *which includes* the word *'trust'* and which is qualified to transact a trust business, may continue the use of such words * * *." (Italics, the writer's).

In contrast, the second proviso reads:

> "But nothing herein shall prevent a title guaranty and trust company from continuing the use of the word 'trust' in its name * * *."

Attention is invited to the use in the first proviso of the phrase, "incorporated under the name which includes the word trust," and the absence of that qualifying phrase in the second proviso. The legislators are presumed to intend the clear meaning of their words. In the former instance, they did use a phrase clearly meaning something which is already done; that is, the inclusion in the name of the word "trust." In the second instance, it is evident that that phrase was omitted.

Continuing the prescriptions for title guaranty and trust companies, Section 9855, reads:

> "All companies doing the business of guaranteeing titles to real property shall comply with and be governed by the foregoing provisions relating thereto."

Then it adds a declaration which seems to support the observations in the foregoing text:

> "But such companies therefore organized and doing business thereunder may continue business without prejudice to any rights thereby acquired or obligations incurred."

Attention is again called to the omission of any clause in this section referring to a previous use of the word "trust" and to that in Section 710-3, pertaining to banks or trust companies, which reads:

> "Provided, however, that any corporation now incorporated under the name which includes the word 'trust' and is qualified to transact a trust business, may continue the use of such word. * * *"

Certainly there is an emphasis on the requirements under which a

trust company may use the word "trust" and a distinction as to its use by title guaranty and trust companies.

If the legislators had intended to fix a date line and declared that thenceforth no title guaranty and trust company might begin to use the word "trust," there was adequate capacity in plain language to express such an intent. It would have been simple prudence for them to insert after the word "company" such a modifier as the phrase "which heretofore used the word 'trust' ", and thus have their clause read: "But nothing herein shall prevent a title guaranty and trust company, which has heretofore used the word 'trust' from using the word 'trust' in its name provided such company is qualified to do business under Section 9851, of the General Code."

In other words, the legislators declined to state positively that only a title guaranty and trust company which in the past had expressly used the word "trust" was thenceforth entitled to its use. On the contrary, they did mean both by what they stated and by what they declined to state, that all companies in the special field of business considered might at any time resort to the use of the word "trust."

Moreover, when they wrote into their bill the declaration that "nothing herein shall prevent a title guaranty and trust company from continuing to use the word "trust," they did not mean that a particular company already privileged might go on using the word; but, rather, that trust companies as a whole, or as a class of business enterprises, might continue to use the word. Thus companies in general, if they had not theretofore used the word, might begin to use it.

In a previous opinion, inaccurate emphasis has been placed on the article "a," to the end that it was held that any company which had not previously used the word "trust" was barred for the future. The article "a" by common usage is made to stand for the general term "all." In this way, the clause actually means; nothing herein shall prevent title guaranty and trust companies—as a general class—from continuing the use of the word "trust" in their names.

In the previous opinion also there is a misinterpretation of the word "continuing." It is insisted that Webster's Twentieth Century Dictionary defines "continue" as "to remain in a state or place" and also "tò retain or permit to remain; to allow to live." Thereupon it is pointed out: "clearly a corporation could not 'retain' a name which it had not previously used." Such definitions are so obvious that they need no comment here.

On the other hand, an interpretation of the entire statute is more helpful in the present problem. It literally means that the general practice of title guaranty and trust companies of using the word "trust" may be continued. For example, when the law says that "a" man who vio-

lates the traffic regulations be punished, it does not mean only the singular number, or particular man. It means, instead, all men. Similarly, when Section 710-3, states that "nothing herein shall prevent 'a' title, guaranty and trust company from continuing the use of the word 'trust,' it means that the recognized practice of such companies in using that word may be continued.

An examination of the section itself, bears out this interpretation. As first passed, there was no doubt as to a definite restriction placed on banks or trust companies and as to a prescribed requirement that they conform to specific standards. There must have arisen, however, a doubt as to how the section would be interpreted in regard to title guaranty and trust companies; or, rather, how it might be misinterpreted to include them in the limitation. Consequently, the legislators evidently seeing the possibility of confusion, added an amendment. In the original section there was no direct reference to title guaranty and trust companies; by the amendment, manifestly passed for the purpose of making the statute clearer, it was stated that "nothing herein shall prevent a title guaranty and trust company from continuing the use of the word trust"—or, by reasonable analysis of the words, "nothing herein shall prevent title guaranty and trust companies from using the word 'trust.' "

Confirmation of this analysis is found in 5 Ohio Jurisprudence. Section 17, at page 288, it is stated:

> "Only 'banks' as defined in Section 2 of the Banking Code (G. C. 710-2) are permitted to use the word 'bank,' 'banker,' or 'banking,' or 'trust,' or words of similar meaning in any foreign language, as a designation or a name, or a part of a designation or name, under which business is conducted. Under this provision the Supreme Court of Ohio held it unlawful for a stockholder to use the designation 'Investment Bankers,' following on his letterheads and in his advertisements, on the theory that such words following closely after a firm name clearly 'designated' the business in which the firm is engaged, and induced casual observers to believe that the firm is doing a banking business."

(Reference to the decision against the use of the designation "Investment Bankers" arises from *Inglis* vs. *Pontius,* 102 O. S. 140, 131, N. E. 509, where it was held to be a violation of Section 710-3 G. C., for Otis and Company, Cleveland, to carry that designation on its letterheads).

In a footnote to the text cited above (O. Jur., Section 17, p. 288),

direct reference to the companies here considered is made. The footnote reads:

> "G. C. 710-3. But this section permits corporations theretofore organized to do a trust business to continue the use of the word 'trust' in its (sic) name, so long as it (sic) complies with the provisions of the Bank Act; it also permits continuation of the use of the word 'trust' in the name of title and trust companies; all other corporations are required under penalty to eliminate the word 'trust' from their corporate name within two years."

Manifestly, the commentator who appended that footnote could not perceive in Section 710-3 a legislative declaration to the effect that "a" title guaranty and trust company or "any" title guaranty and trust company, which before the date of restriction in the use of the word "trust" by banks or trust companies had not used that word, was thenceforth and forever prohibited from such use. Rather, from his editorial detachment, he analyzed the legal language as meaning, to the contrary, that title guaranty and trust companies in general are to be permitted to continue the use, when and if they so desire.

The case of *Inglis* vs. *Pontius,* of course, pertained to brokers, and not to a bank, trust company, or title guaranty and trust company. Otis & Company sought to resist a ruling of the State Superintendent of Banks to the effect that it was illegally using on its letterhead the designation "Investment Bankers." It set forth that such a designation was of commercial value, that it had long been used and advertised, and that its discontinuance would result in a loss of $500,000.

The Supreme Court properly ruled that:

> "It cannot, however, be seriously claimed that Otis & Co. is a bank, as measured by Section 710-2. Neither is it claimed by counsel in argument that it is a bank, or that it is entitled to use the word 'banker' as a part of its name. The contention is that the term 'investment bankers' is not used as a part of its name, or even as a part of a designation. * * *
>
> In addition to the statutory requirements, banking institutions voluntarily do many things to safeguard the depositors.* * *
>
> By reason of such regulations and supervisions, and by reason of careful methods voluntarily followed by banking institutions, the public have learned to place their confidence in banks. * * *

> It will be seen, therefore, that the use of the word 'bank' or 'banker' is a valuable adjunct to any business, and the protection of the provisions of the banking code should therefore be available only to those institutions which are subject to regulation and restrictions imposed by the banking code. * * *
>
> It is of course conceded that Otis & Co. is a highly reputable firm and yet, if new customers are attracted to it by the use of the term and confidence inspired by it, the same result would naturally accrue to disreputable and irresponsible concerns, which might draw their victims in the belief that they are dealing with bankers under state sanction and supervision. * * *
>
> It is apparent that this evil is one of the objects aimed at by the general assembly in enacting this section, and the section would fall short of this purpose if unscrupulous persons or concerns without financial responsibility, who are not in fact banks or bankers, are permitted to use the term 'investment bankers.' "

It is hardly necessary to comment on the wisdom of prohibiting a brokerage house from holding itself out as a bank, even if indirectly by a designation. Under police power, the legislature sought to correct exactly such business practices and thus to protect the public. A bank is under a high degree of state supervision; a broker comparatively is not. A title guaranty and trust company likewise is under state supervision, with the responsibility of reporting to the state auditor. In consequence, the exact reason which applied in the Supreme Court's decision against the practice by Otis and Company would not be pertinent as to title guaranty and trust companies. With the latter companies, there is no likelihood that the public would be misled; for "unscrupulous persons or concerns without financial responsibility" are presumably forestalled by the requirements covering applications declaring the purpose of the company, the deposit of ample surety, and the regulation by the state auditor. Hence, the legal reasoning of the Supreme Court in *Inglis* vs. *Pontius,* while thoroughly acceptable as against a broker, would certainly not be called forth as precaution in the consideration of title guaranty and trust companies.

Section 710-3, which was considered by the Supreme Court in *Inglis* vs. *Pontius,* was passed in 1919 (108 O. L., Part I, page 80; House Bill No. 80) and read: "The use of the words * * * trust * * * is restricted to banks as defined in the preceding section." Obviously, title guaranty and trust companies are not banks, and in consequence, by that enactment they were placed outside the class of companies to which the

use of the word "trust" was strictly permitted by the statute.

Thereupon, as suggested before, something happened in the legislative mind. It appears that there must have been some reconsideration of the effect of the law of 1919 on title guaranty and trust companies. If it had been the purpose of the legislators to exclude all such companies from the use of the word "trust;" that objective had been achieved by the first part of the section. Nevertheless, an amendment was quickly adopted (in 1920), to clear away any question as to the privilege of those companies. That amendment (House Bill No. 708, Ohio Laws, 108, Part 2, page 1101) stated that "nothing herein shall prevent a title guaranty and trust company from continuing the use of the word "trust" in its name." It did not say a title guaranty and trust company "now incorporated under the name which includes the word "trust," as it did with reference in the same paragraph to trust companies; but rather, omitted that qualifying phrase and said that "a" title guaranty and trust company, meaning any such company or all such companies, might go on using the word.

If the word "trust" is to be stricken from the name of the companies here considered, it might be prudent to ask what is the exact nature of their business. Are they limited to the examination and insurance of titles? If that be so, a name such as title guaranty company might describe them. If they have a broader business, and particularly if they are permitted to accept the responsibilities of trustee relations and to act in that confidential capacity, then it is certainly only reasonable that their title should at least fit descriptively their business. The latter part of Section 9850 is thus in point.

The first part of that section states that such companies "may prepare and furnish abstracts and certificates of title to real estate, bonds, mortgages, and other securities and guarantee such titles". That clearly is a business based on insurance or indemnity. The second part states that the company may * * * "make loans for itself or as agent or trustee for others, and guarantee the collection of interest and principal of such loans; take charge of and sell, for others, and perform all the duties of an agent relative to property deeded or otherwise entrusted to it." That part just as clearly does not relate to insurance. It relates unquestionably to trusts. The company is to act for another who is cestui qui trust. It is to take legal possession of property for the benefit of the one who trusts it. It has the high degree of fiduciary responsibility imposed on all trustees. How, then, can its business be accurately described in its full proportions, except by the use of the exact word "trust?"

The problem here considered is finally and fundamentally that of interpreting a statute. What was the legislative intent? What is the

meaning of the language used? What were the circumstances of the moment impressing the legislators ? What rights were to be protected? What evils were to be remedied?

It is plain that banks and trust companies are subject to state regulation arising from police power. Because of public interest in such businesses the public must be protected by supervision. State supervision likewise extends to title guaranty and trust companies which act, first, as searchers and insurers of titles and, in a second capacity, as trustees holding the property of others. Such companies, of course, have long been recognized as legitimate business enterprises. Their name itself has become one of common usage; their purpose is one of common understanding. Consequently, it is not likely that names of this type will be misleading and attract innocent victims.

Was there, then, any sudden and imperative need for prohibiting by statute the inclusion in such a firm name of the word "trust?" Was there any crying evil to be remedied? Was there an outraged public demanding protection and a devoted legislature aroused to the need of the hour? Neither from legislative history nor from common knowledge of the circumstances in 1919 and 1920 can any one recreate a compelling atmosphere for remedial measures anent title guaranty and trust companies.

> "A statute must be construed in the light of the evil it seeks to remedy and in the light of conditions obtaining at the time it was passed." *State of South Carolina* vs. *Kizer,* 164 S. C. 383, 162 S. E. 440, 81 A. L. R. 722.
>
> "The reason and necessity for the statute, the evil sought to be remedied, and the objects and purposes sought to be attained by it are to be taken into considereation * * *." *Schneller by guardian,* vs. *Schneler, Executor, et al.,* 356 Ill. 89, 190 N. E. 121, 92 A. L. R. 838.
>
> "The terms of a statute must be so interpreted as to effectuate the purpose of the legislature ascertained from its several parts and the meaning fairly attributable to all its words, considered in connection with the causes leading to its enactment. * * *" *Kneeland* vs. *Emerton,* 200 Mass, 371, 183 N. E. 155, 87 A. L. R. 1.

This doctrine of evils to be remedied is recognized by the State Supreme Court in *Inglis* vs. *Pontius,* supra. Recognizing the earlier patch-work of banking laws and the effect of a questionable use of prohibited designations, the Court said:

> "Before beginning a discussion of the proper construction

of the statute we think it will be beneficial to define the status of banks and banking in Ohio. Section 710-3, General Code, is a part of the new banking code recently adopted by the General Assembly, and this section should be construed in the light and spirit of the entire chapter. Before the adoption of the banking code there were more than two hundred seventy-five sections of the statute for the regulation of banks and banking, and nearly two hundred fifty of these were repealed, the provisions of which were, for the most part, carried into the new code. There are also many sections of the criminal code designed to regulate banks and banking and to prevent and punish offenses in relation thereto. * * *."

"Applying the above-quoted definition (that of 'designation'), and construing the statutes accordingly, it must be said that the words 'investment bankers', following as they do so closely the firm name, clearly designate the business in which Otis & Co. is engaged and induces in the casual observer the belief that the firm is doing a banking business. It is of course conceded that Otis & Co. is a highly reputable firm, and yet if new customers are attracted to it for the use of the term and the confidence inspired by it, the same result would naturally accrue to disreputable and irresponsible firms * * *.

"It is apparent that this evil was one of the objects aimed at by the General Assembly in the enactment of this section. * * *"

It is accepted here that misuse of the word "banker" by a firm not qualified under the Bank Act is subject to prohibition, and the reasoning of the Supreme Court is adopted. A close reading of the case, however, disclosed not a single reference to title guaranty and trust companies. Evidently, in that important litigation, which has become a land-mark case, the evidence did not mention, even incidentally, title guaranty and trust companies, counsel did not think of title guaranty and trust companies, the court in its deliberation did not consider title guaranty and trust companies. Can such a united silence be accidental? Or is it not more reasonable to deduce that title guaranty and trust companies were so well fortified in their legal status that they were not even subject to a thought as to impropriety in the use of the word "trust?"

That the court recognized and the legislature met a necessity for reformation of the Bank Act is now legal history. This was done in 1919. At the same time, the law pertaining to title guaranty and trust companies was not incorporated in the banking code, but, rather, was continued as a distinct chapter of the General Code. Thus it is observed

that provision for the organization and operation of such companies was made in an Act passed as House Bill No. 393, March 29, 1906 (98 Ohio Laws 153), and now appearing as Section 9850, et seq., G. C.

That law still prevails, with the chapter still distinct. Consequently, while the legislature, in 1919, was concerned with recodifying the numerous statutes pertaining to banks, the chapter pertaining to title guaranty and trust companies, in affect since 1906, was left in peace. Manifestly, there was no evil demanding remedy. The silence of the legislature may well be taken to indicate contentment of the public.

In view of the tranquility of the time of the revision of the Bank Act, why would it be imperative suddenly to take away part of such firm names of title guaranty and trust companies as had become fixtures in the public mind? There appears to have been no demand for drastic action, and there certainly is no reason to assume that the legislature would act on a mere whim.

To the contrary, it does appear that there had been at least two hundred seventy scattered sections relative to banking, and that the legislature was concerned with recodifying those sections. Thus the new Bank Act was brought up to date rearranged, and adopted.

Thereupon, it is reasonable to deduce, the legislators observed that the law as passed in 1919, and particularly Section 710-3, was somewhat confusing as to its effect on title guaranty and trust companies. That confusion was relieved by the amendment of 1920, pointedly excepting such companies.

In conclusion, it is the opinion from the foregoing that the legislature sought to distinguish statutorily the position of title guaranty and trust companies; that while the Banking Law was recodified, the early law anent title guaranty and trust companies was left undisturbed; that the case of *Inglis* vs. *Pontius*, although good law as affecting brokers is not similarly applicable to the present interrogatory; that finally the amendment to Section 710-3 was intended to except title guaranty and trust companies to the extent that they are, in the future, as they had been in the past, entitled to use the word "trust" as logically descriptive of their customary and lawful business.

Therefore, in specific answer to your inquiry, it is my opinion that title guaranty and trust companies have a right to use the word "trust" in their firm names, whether or not they had already used that word when the Bank Act was passed, as recodified, in 1919.

The restriction of the use of the word "trust", under Section 710-3, General Code, to banks, as defined in Section 710-2, does not apply to title guaranty and trust companies, since they are specifically excepted. Thus there is a statutory distinction between the requirements for banks and trust companies and those for title guaranty and trust companies;

so that while the former companies must qualify with those requirements or forego the use of the word "trust", and other companies not qualified as banks or trust companies are also prohibited from such use, or any similar designation, title guaranty or trust companies, may continue to use or adopt anew the word "trust."

Respectfully,
HERBERT S. DUFFY,
Attorney General.

312.

APPROVAL—BONDS OF CITY OF CANTON, STARK COUNTY, OHIO, $35,000.00.

COLUMBUS, OHIO, March 23, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.
GENTLEMEN:

Approval: Bonds of City of Canton, Stark County, Ohio, $35,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of waterworks bonds in the aggregate amount of $530,000, dated October 1, 1919, bearing interest at the rate of 6% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,
HERBERT S. DUFFY,
Attorney General