

2213.

APPROVAL, BONDS OF SANDUSKY COUNTY, OHIO—\$49,000.00.

COLUMBUS, OHIO, January 24, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2214.

APPROVAL, NOTES OF XENIA TOWNSHIP RURAL SCHOOL DISTRICT,  
GREENE COUNTY, OHIO—\$7,500.00.

COLUMBUS, OHIO, January 24, 1934.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

2215.

BANK—UNLIMITED AMOUNT OF BONDS ISSUED UNDER HOME OWNERS  
LOAN ACT OF 1933 MAY BE ACQUIRED BY EXCHANGE OF  
MORTGAGES.*SYLLABUS:**Statutes of this state impose no limitation upon the amount of bonds issued under the Home Owners Loan Act of 1933, which a bank, incorporated under the laws of Ohio, may acquire by the exchange of mortgages.*

COLUMBUS, OHIO, January 24, 1934.

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

DEAR SIR:—I have your request for my opinion, which reads as follows:

“Section 710-111 of the General Code, as recently amended, permits banks to invest their capital, surplus, undivided profits and deposits in bonds issued by the Home Owners’ Loan Corporation. Since the Legislature has vested authority in banks to so invest by placing the bonds in question in sub-paragraph (a) of said Section 710-111 G. C., there apparently is no limitation upon the amount of money that a bank may invest in such bonds.

I anticipate that banks will acquire these bonds to a large extent through the exchange of mortgages now held in their assets. Section 710-121 of the General Code, in enumerating the limitations placed upon investments set forth in said Section 710-111, omits sub-paragraph (a) thereof. However, by reference to Section 710-112, there is a specific limitation placed upon loans by banks made upon mortgage notes, to-

wit: In the case of commercial banks not more than fifty per cent, and in the case of savings banks and trust companies not more than sixty per cent of the amount of the paid-in capital, surplus and deposits may be so invested.

I find no specific authority given by law for banks to exchange an asset for a security eligible for investing its funds in, but have assumed that when the desired security if purchased would be a legal investment, banks have the implied power to make such exchanges. If I am correct in this assumption, the question then presents itself as to whether or not there will be any limitation upon the amount of such bonds issued under the Home Owners' Loan Act which may be acquired by exchanging therefor mortgages, and I would appreciate your opinion regarding this matter."

In Opinion 1404, rendered by this office August 15, 1933, it was held, as disclosed by the syllabus:

"Section 710-111 of the General Code, as amended by Amended Senate Bill No. 371 (90th General Assembly), provides that bonds issued under the Home Owners' Loan Act of 1933 (H. B. No. 5240, 73rd Congress, 1st Session) shall be a legal investment for banks organized under the laws of Ohio."

In my opinion you have correctly assumed that under their implied powers, banks may accept in exchange for other assets securities which they may legally purchase as an investment. That we have previously taken this view is shown by the following language appearing in Opinion 1717, rendered by this office October 11, 1933:

"Recently I expressed the view informally that this amendment authorized banks operating normally, and banks under conservatorship (Section 710-88a, General Code), to exchange mortgages for bonds issued by the Home Owners Loan Corporation."

Section 710-111 of the General Code (amended 115 O. L., 468), provides in part:

"A bank may invest its capital, surplus, undivided profits and deposits in the following securities:

(a) Bonds or other interest-bearing obligations of the United States, the Philippines, Hawaii, Porto Rico, and the District of Columbia, or those for which the faith of the United States is pledged to provide payment of the interest and principal, and in farm loan bonds issued by federal land banks, and joint stock land banks, and bonds issued under the home owners' act of 1933."

The subsequent paragraphs of this section provide for investments in (b) bonds of foreign governments, (c) bonds of states or territories of the United States, (d) bonds of political subdivisions of this state, (e) bonds of subdivisions of other states and territories of the United States, (f) bonds of Canadian

provinces, (g) bonds of governmental subdivisions of foreign countries, (h) bankers' acceptances eligible for rediscount with federal reserve banks, (i) bonds of private corporations, (j) railroad equipment bonds or car trust certificates and bonds secured by first mortgage on steel steamships, and (k) bonds or notes secured by first mortgages on the fee simple title of improved real estate of not more than sixty per cent of its value.

Section 710-112 of the General Code reads:

"Loans by banks upon mortgage notes shall be made upon first mortgage upon real estate situated in this state, or in states contiguous thereto, and shall not exceed forty per cent (40%) of the value of such real estate if unimproved, and sixty per cent (60%) of such value if improved, and the improvements shall be kept adequately insured. *In the case of commercial banks not more than fifty per cent (50%) and in the case of savings banks and trust companies, not more than sixty per cent (60%) of the amount of the paid in capital, surplus and deposits of such banks or trust company at any time shall be invested in such real estate securities.* Loans on collateral enumerated in clauses (i), (j) and (k) of section 111 (G. C. 710-111) of this act, shall not exceed eighty per cent of the value of such collateral."

Section 710-121 of the General Code provides:

"Not more than twenty per cent of the capital and surplus of a bank doing business under this chapter shall be invested in any one stock or security *unless it be in bonds or other interest bearing obligations enumerated in paragraphs a, b, c, d, e and h of section 111 (G. C. 710-111) of this act;* or in the stock of a corporation owning the land, building or buildings occupied by such bank for its banking quarters, and then not exceeding sixty per cent of its capital and surplus shall be so invested, which shall be carried on the books of the bank as an investment or equity in real estate or in the bonds, notes, acceptances, debentures or first lien securities of banks or corporations chartered or incorporated under the laws of the United States and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership or control of local institutions in foreign countries or in such dependencies or insular possessions; including the bonds, notes, acceptances, debentures or first lien securities of one or more banks or corporations chartered or incorporated under section 25a of the Federal Reserve Act, as approved December 24, 1919." (Italics the writer's.)

Sections 710-111, 710-112 and 710-113 of the General Code were enacted as part of the same act and appeared therein in numerical order. (108 O. L., Pt. 1, p. 80.)

Section 710-111, paragraph (k), the last paragraph in the section, authorizes a bank to invest in "bonds or notes secured by first mortgage on the fee simple title of improved real estate as defined in section 113 (G. C. 710-113) hereof of not more than 60% of the value thereof."

The question is presented whether bonds of the Home Owners' Loan Corporation are "such real estate securities" in which commercial banks and savings banks may invest only a portion of their capital, surplus and deposits under Section 710-112. These bonds provided under the Home Owners' Loan Act of 1933 are issued by the Home Owners Loan Corporation and are not secured by a pledge or specific mortgage on real estate. While the assets of the corporation which secure them consist of real estate mortgages, in my opinion they are not "real estate securities." Except as to the payment of interest, these bonds are secured only by the credit of the corporation issuing them. The payment of interest is unconditionally guaranteed by the United States. Section 4c.

Furthermore, in my opinion "such real estate securities" as used in section 710-112 of the General Code are those mentioned in paragraph (k) of section 710-111. The legislature might have included bonds of the Home Owners Loan Corporation in paragraph (k), but it did not see fit to do so. Even assuming that these bonds are "real estate securities," we find in reading paragraphs (a) and (k) together that the latter provides that banks may not invest in any bonds or notes secured by first mortgages on improved real estate in an amount greater than 60% of its value, except that investments in Home Owners Loan Corporation bonds are not so limited. Section 710-112, referring to paragraph (k), as so construed, does not limit the investment by banks in bonds of the Home Owners' Loan Corporation.

Section 710-121, supra, in enumerating the limitations therein placed upon investments, set forth in section 710-111, specifically omits paragraph (a). Therefore, in my opinion, section 710-121 of the General Code does not limit the extent to which banks may invest in bonds of the Home Owners' Loan Corporation.

Section 710-122, General Code, reads:

"A bank shall not lend, including overdrafts, to any one person, company, corporation or firm, more than twenty per cent of its paid-in capital and surplus, unless such loan be secured by first mortgage upon improved farm property in a sum not to exceed sixty per cent of its value.

The total unsecured obligation of any one person, company, corporation or firm, in any bank shall not exceed four per cent of the paid-in capital and surplus of such bank, unless such person, company, corporation or firm furnishes the bank with a statement of his or its financial responsibility prior to the extension of such credit.

The total liabilities, including overdrafts, of any one person, company, corporation, or firm, to any bank, either as principal debtor or as security or indorser for others, for money borrowed, except as additional security for a liability previously incurred, at no time shall exceed twenty per cent of its paid-in capital stock and surplus; provided, however, that (1) the discount of bills of exchange drawn in good faith against actually existing values, (2) the discount of trade-acceptances or other commercial and business paper actually owned by the person, company, corporation or firm, negotiating the same, and (3) the purchase or discount of any note or notes secured by not less than a like face amount of bonds of the United States, or certificates of indebtedness of the United States, shall not be considered as money borrowed within the meaning of this section."

It may be contended with some force that this section limits investments by banks in bonds of the Home Owners' Loan Corporation to 20% of their paid-in capital and surplus. If an investment in such bonds constitute a loan to the Home Owners' Loan Corporation, this conclusion follows: An investment in promissory obligations is ordinarily in legal effect a loan. A purchaser of bonds becomes a creditor of the issuing corporation. However, it must be borne in mind that we are construing certain statutes. Section 710-121 concerns limitations upon investments; section 710-122 relates to limitations upon loans.

Section 710-108 reads:

"A bank may purchase, lease, hold and convey real estate only as follows:

(a) A building or quarters therein, or lands whereon is erected or may be erected a building or buildings useful for the transaction of its business and from portions of which, not required for its use, a revenue may be derived; but the cost of such building or buildings and the lands whereon they are erected, in no case shall exceed sixty per cent of its paid-in capital and surplus;

(b) Such as is mortgaged or conveyed to it in good faith by way of security for loans made by or money due to such corporation:

(c) Such as has been purchased by it at sales upon the foreclosure of mortgages owned by it, or on judgments or decrees obtained or rendered for debts due to it, or in settlements effected to secure such debts. All real property referred to in this paragraph shall be sold by such bank within five years after it is vested therein, unless upon application by the board of directors, the superintendent of banks extends the time within which such sales shall be made."

Section 710-136 provides:

"Commercial banks may loan money upon personal or collateral security, discount, buy, sell or assign promissory notes, drafts, bills of exchange, trade and bank acceptances, and other evidences of debt and buy and sell exchange, coin and bullion."

Section 710-108 was formerly P. & A. Section 9763. P. & A. Section 9758 was a prior section analogous to Section 710-111. P. & A. Section 9756 was superseded by Section 710-112. P. & A. Section 9790 was a prior section analogous to Section 710-121. Section 710-122 is substantially in the same language as P. & A. Section 9754.

After referring to the former sections of the General Code just mentioned, one of my predecessors, in an opinion reported in Opinions of the Attorney General for 1917, Vol. 1, p. 750, said at pages 751 and 752:

"It is apparent from an examination of the above sections, that a distinction is made between the power to make loans and the power to make investments. This distinction is present throughout the act; thus, section 9753 provides for investments by a commercial bank in real estate, while section 9756 refers solely to loans by such banks on real estate. \* \* \* \* \*

Bearing in mind this fact, that is, that the *power to loan and the power to invest funds of a bank are distinct*, and referring again to the sections quoted above, it will be seen that section 9757 gives the power, among other powers, to commercial banks to loan money on personal security, and to invest in promissory notes and other evidences of indebtedness. Section 9758 gives the power to commercial banks to invest their capital, surplus and deposits in, and to loan them upon, certain specified securities, or evidences of indebtedness. Sections 9754 and 9790 provide the limitations upon the exercise of the powers granted by sections 9757 and 9758, section 9754 providing the limitation of 20% as to all loans and section 9790 the same limitation of 20% as to all investments, except those mentioned in paragraphs b, c and d of section 9758." (Italics the writer's.)

I am of the view that the statutory changes since the rendition of that opinion are not material to the present question.

Section 710-111 designates legal investments for banks. Section 710-108 concerns investments in real estate. Section 710-112 relates to both loans and investments, and preserves the distinction between the two. Section 710-121 places a limitation upon investments, while section 710-122 imposes a restriction upon loans. Thus, in the light of the former opinion, I am of the view that Section 710-122 does not limit investments.

Specifically answering your inquiry, it is my opinion that statutes of this state impose no limitation upon the amount of bonds issued under the Home Owners' Loan Act of 1933, which a bank, incorporated under the laws of Ohio, may acquire by the exchange of mortgages.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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2216.

METROPOLITAN PARK DISTRICT—MEMBERSHIP OR GREEN FEES  
 CHARGED ON GOLF COURSES OPERATED THEREBY SUBJECT TO  
 TAX LEVIED BY SECTION 5544-2, GENERAL CODE.

*SYLLABUS:*

*When a metropolitan park district operates one or more golf courses and charges membership or green fees, such fees are subject to the tax levied by Section 5544-2, General Code.*

COLUMBUS, OHIO, January 25, 1934.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Amended Senate Bill No. 411, paragraph 6, provides for a tax of five per centum of the amount of membership dues of every club or