

5087.

SUPERINTENDENT OF BANKS—MAY PAY REAL PROPERTY TAXES OF BANK IN LIQUIDATION UNDER AM. S. B. No. 105, 90TH G. A. (115 O. L., Pt. 2, 332).

*SYLLABUS:*

*The Superintendent of Banks, in charge of a bank for liquidation under Section 710-89, General Code, may pay real property taxes owing by such bank in the manner provided by Amended Senate Bill No. 105, 90th General Assembly (115 O. L., Pt. II, 332) and by Senate Bill No. 359, 91st General Assembly.*

COLUMBUS, OHIO, January 10, 1936.

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

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

“Amended Senate Bill No. 105, approved December 13, 1934, known as the Whittimore Bill, provides as follows:

‘Any person, firm or corporation charged with or legally authorized or required by law or decree of court to pay real property taxes and assessments which have become delinquent at or prior to the August settlement in the year 1934, or any person, firm or corporation holding a lien upon such real property may at any time prior to the first day of September in the year 1935 elect to pay the principal sum of such delinquent taxes and assessments as provided in this act, anything in the permanent statutes of this state relating to the payment of real property taxes, assessments, penalties and interest thereon to contrary notwithstanding \* \* \*.’

The question I wish to submit is whether or not the Superintendent of Banks has the authority to pay taxes owing by the bank, according to the terms and provisions contained in the above section. Putting it in another form, is the Superintendent of Banks included in the term ‘any person, firm or corporation.’”

Amended Senate Bill No. 105 (115 O. L., Pt. 2, p. 332) was an act extending the provisions of Amended Senate Bill No. 42 (115 O. L. 161), as amended by Amended Senate Bill No. 23 (115 O. L., Pt. 2, 228).

Senate Bill No. 359, 91st General Assembly, effective on October 1, 1935, is a similar statute applicable to taxes and assessments which

became delinquent "at or prior to the August or September settlement in the year 1935", providing the taxpayer elects to make payment under the act "at any time prior to the thirty-first day of December in the year 1936." Except for these dates, the language quoted in your letter from Amended Senate Bill No. 105 appears verbatim in Section 1 of Senate Bill No. 359. Thus, the answer to your question will also determine the applicability of Senate Bill No. 359 to the Superintendent of Banks.

It is unnecessary to discuss the substantive provisions of these acts except to state that they provide for payment of delinquent taxes in cash or installments, under certain circumstances without penalty, interest or other charges. As appears from the emergency clauses of the various Acts, they resulted from a legislative recognition that the general economic conditions had made it impossible for taxpayers to pay their taxes as they accrued, and further that increased delinquencies had produced such a substantial failure in revenue as to impair the performance of necessary governmental functions by numerous subdivisions.

No doubt the various banks in liquidation own real estate which is subject to taxation. Banks are authorized to acquire real estate under Section 710-108, General Code. Banks may also make loans secured by first mortgages upon real estate. See Sections 710-111, 710-112 and 710-113, General Code. Anyone holding a "lien" upon real estate may take advantage of the provisions of Amended Senate Bill 105 and Senate Bill 359. Banks, like other owners of real estate, are subject to all laws with respect to the taxation of such property.

There can be no question but that every bank in this state performing normal banking functions falls within one of the terms "person," "firm" or "corporation." Most of them are corporations. Sections 710-39, et seq., General Code. A few are unincorporated (Section 710-76, General Code) but these would come within the term "firm" unless there exist individual proprietorships, which would be included within the term "person."

Section 710-89, General Code, authorizes the Superintendent of Banks to take possession of the business and property of any state bank, upon the happening of certain named contingencies. Subsequent sections enumerate his powers and duties upon so doing. Section 710-91, General Code, provides that the mere posting of the notice of taking possession vests title to and right of possession of all assets and property in the Superintendent of Banks.

Section 710-95, General Code, which confers numerous powers and imposes various duties upon the Superintendent, authorizes him "to pay off and discharge any taxes, assessments, liens, claims or charges against the assets or property of such bank." The Superintendent of Banks is thus one "charged with or legally authorized or required by law \* \* \*

to pay real property taxes and assessments," if he is within the terms of the language "any person, firm or corporation."

Sections 687 to 687-20, both inclusive, General Code, contain provisions with respect to the liquidation of building and loan associations in all material respects analogous to those applicable to banks. In the case of *Warner v. Mutual Building & Investment Co.*, 128 O. S., 37, the court said of the Superintendent of Building and Loan Associations, in charge of an institution for liquidation:

"He becomes the *alter ego* of the particular building and loan association; in other words, a trustee for the benefit of the creditors of the institution and for the institution itself."

The Superintendent of Banks, in charge of a bank for liquidation, is a "person" and he is also the *alter ego* of a "corporation." Without doubt the statute in question applies to S. H. Squire as a "person" when he pays taxes upon his individual real estate. He is no less a "person" when he acts in a fiduciary capacity on behalf of a corporation, which, but for his official intervention, could have availed itself of the act. If the legislature had intended to restrict the word "person" to exclude a natural person acting in a fiduciary capacity, it would have done so by apt language.

While it is the duty of courts to interpret the law as they find it, yet the courts will also attempt to give statutes "such construction as will result in the accomplishment of an intelligent and reasonable purpose rather than a ridiculous and absurd one." *State ex rel. v. Edmonston*, 89 O. S., 93, 96. The acts in question are particularly applicable to insolvent banks, since any saving in taxes directly benefits their distressed depositors.

It would be a peculiar result that a solvent and going institution could take advantage of the statutes, designed to assist the economically afflicted, whereas the same institution, upon being taken over for liquidation by the Superintendent of Banks as insolvent, could not. The language used by the legislature does not require such construction.

In the light of the foregoing, I conclude that the Superintendent of Banks, in charge of a bank for liquidation under Section 710-89, General Code, may pay real property taxes owing by such bank in the manner provided by Amended Senate Bill No. 105, 90th General Assembly (115 O. L., Pt. II, 332) and by Senate Bill No. 359, 91st General Assembly.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*