

in such cases, a person owning land abutting upon or adjoining such abandoned canal lands has a right to a lease of the canal lands prior to that of other persons generally, provided the application of the owner of such abutted property makes application therefor within ninety days after the expiration of the period of one year from the effective date of the act, which limits the prior right of municipalities to a lease of such lands.

Although you do not so state, I assume that the parcel of land here in question is not in a municipal corporation and that no application for the lease of the same has been made by any such municipal corporation. I also assume that the lessee named in this lease is the owner of land abutting upon the above described parcel of abandoned canal land or, if he is not the owner of such abutting land, that the owner of such abutting land has not made application for the lease of this property within the time prescribed in this statute.

With these assumptions, I find upon examination of this lease that the same has been properly executed by you and by the lessee therein named. I also find upon examination of the provisions of the lease, and of the conditions and restrictions therein contained, that the same are in conformity with the provisions of said act and of other statutory enactments relating to leases of this kind. I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease, and upon the duplicate and triplicate copies thereof.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1717.

LIQUIDATION OF BANKS—SUPERINTENDENT OF BANKS MAY EXCHANGE DISTRESS MORTGAGES FOR BONDS ISSUED UNDER HOME OWNERS LOAN ACT OF 1933 WHEN.

SYLLABUS:

Under Section 710-95, General Code, the Superintendent of Banks may exchange distress mortgages among the assets of banks in the process of liquidation for bonds issued under the Home Owners Loan Act of 1933, provided that such exchange is approved by the Common Pleas Court in which the liquidation proceedings are pending.

COLUMBUS, OHIO, October 11, 1933.

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

DEAR SIR:—I have your letter of recent date, which reads as follows:

“Reconstruction Finance Corporation has requested that I ask your opinion relative to my right to exchange distress mortgages in the assets of banks in the process of liquidation for bonds to be issued by the Home Owners’ Loan Corporation.

Many of such mortgages have, prior to the closing of such institutions, been pledged with Reconstruction Finance Corporation to secure

loans and that corporation desires your opinion as to my power to make such exchanges before it will give its consent to the exchange of mortgages so held as collateral for bonds of the Home Owners' Loan Corporation.

Under sub-paragraph one of that portion of Section 710-95 G. C., as amended, prescribing my powers, authority and duties with approval of the Court of Common Pleas having jurisdiction, I have felt that such exchanges could be made by me after obtaining the approval of said court in the manner provided by law."

Section 710-95 of the General Code, as amended (Baker Act, House Bill 661, 90th General Assembly), provides in part as follows:

"Without prejudice to or limitation of the foregoing powers, authority and duties, the superintendent of banks may, upon application to the court of common pleas in which the proceedings for the liquidation of such banks are pending, or a judge thereof, and on such terms as such court, or such judge, may by order approve;

1. Sell or compromise any or all bad or doubtful assets and debts owing to such bank; compromise claims against such bank and sell, lease, exchange or otherwise dispose of any real estate or personal property, or both, of such bank, in whole or in part.

* * * "

It appears from this section that you are authorized to sell or compromise bad or doubtful assets and further to exchange or otherwise dispose of real or personal property of a bank in liquidation, provided that the approval of the Common Pleas Court is obtained. It is my understanding that distress mortgages mentioned in your letter are properly classified among bad or doubtful assets. In view of the broad language of the statute, it is my opinion that you are authorized to make the contemplated exchange unless there is something in the character of bonds issued by the Home Owners Loan Corporation which would necessitate the opposite conclusion. Under well settled principles of statutory construction, the fact that these bonds had not been authorized by Congress at the time of the amendment of Section 710-95, General Code, will not alone prevent the acceptance of these bonds. It thus becomes material to inquire as to the character of the bonds.

Under Amended Senate Bill 371, 90th General Assembly, Section 710-111, General Code, was amended to make bonds issued under the Home Owners Loan Act of 1933, legal for investment by banks. 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. Senate Bill 371 also amended Section 710-150 to authorize such bonds to be deposited by trust companies with the Treasurer of State. The Legislature having thus recognized the bonds in question, I see no reason why the Superintendent of Banks may not accept them in exchange for bad or doubtful assets of a bank in liquidation.

In view of the foregoing, and in specific answer to your inquiry, it is my opinion that under Section 710-95 of the General Code, the Superintendent of Banks may exchange distress mortgages among the assets of banks in the process of liquidation for bonds issued under the Home Owners Loan Act of 1933, pro-

vided that such exchange is approved by the Common Pleas Court in which the liquidation proceedings are pending.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1718.

APPROVAL, DEED TO LAND IN LUCAS COUNTY, OHIO.

COLUMBUS, OHIO, October 11, 1933.

The Ohio State Archaeological and Historical Society, High Street and Fifteenth Ave., Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication, again submitting for my examination and approval a certain deed executed by the Commerce Guardian Trust and Savings Bank, trustee, of Toledo, Ohio, and by I. J. Fulton, Superintendent of Banks, acting by the hand of one Frank Collins, Special Deputy Superintendent of Banks. A former deed conveying the property now described in this deed was submitted to me for approval early in the month of September, 1933, and the same was disapproved by me for the reason that the description of the property intended to be conveyed by said deed appeared on the face of the deed to be defective.

The defect in the description of the property conveyed has been corrected in the new deed which conveys to the Ohio State Archaeological and Historical Society a small parcel of land in Monclova Township, Lucas County, Ohio, as an addition to the site of Turkey Foot Rock.

Upon examination of this deed and assuming, as appears to be the fact, that Frank Collins is a special deputy superintendent of banks appointed under authority of Section 710-94, General Code, as amended in House Bill No. 661, enacted by the 90th General Assembly, and as such authorized to execute and acknowledge deeds for the conveyance of real estate the title to which is held by banks which have been taken over for liquidation, I find that this deed has been properly executed and acknowledged both by said bank and by said Frank Collins, acting as special deputy superintendent of banks. Said deed is accordingly hereby approved for acceptance by you, as is evidenced by my approval endorsed upon the deed.

No abstract of title of the property described in this deed has been submitted for my examination and it will be understood that in approving the legality and form of this deed, I am not expressing any views with respect to the title to this property.

Respectfully,
JOHN W. BRICKER,
Attorney General.