

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 village.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1049.

APPROVAL, BONDS OF CITY OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO—\$196,000.00.

COLUMBUS, OHIO, August 20, 1937.

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

GENTLEMEN:

RE: Bonds of City of Cuyahoga Falls, Summit County, Ohio, \$196,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds, Series B-53, in the aggregate amount of \$365,000, dated October 1, 1937, bearing interest at the rate of 4¼% 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.

1050.

LOANS SECURED BY LIEN ON REAL ESTATE—MAY BE MADE WHEN—DURATION.

SYLLABUS:

Under the provisions of Section 710-112 of the General Code of Ohio, a loan secured by a lien on real estate may be made in an amount

not to exceed sixty per centum of the appraised value of the real estate pledged as security for such a loan and for any period not exceeding ten years, the terms of which loan provide for installment payments sufficient to amortize it at the rate of forty per centum or more of the principal amount of such loan if made for a period of ten years. In other words, for each year of such loan, there must be an amortization of four per centum or more of the principal amount of said loan.

COLUMBUS, OHIO, August 20, 1937.

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

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

“Section 710-112 of the General Code of Ohio as amended, effective August 13, 1937, the provisions of which section will govern the making of loans by state banks secured by first liens upon real estate, provides in part as follows:

‘The amount of any such loan hereafter made shall not exceed fifty per centum of such appraised value of the real estate offered as security and no such loan shall be made for a longer term than five years; except that (1) any such loan may be made in an amount not to exceed sixty per centum of such appraised value of the real estate offered as security and for a term of not longer than ten years if the loan is secured by a mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize forty per centum or more of the principal of the loan within a period of not more than ten years, * * *.’

May I have your opinion as to whether or not under the portion of Section 710-112, G. C., above quoted, a loan to be secured by mortgage, deed of trust or other such instrument creating a first lien upon improved real estate, may be made in an amount not exceeding sixty per cent of the appraised value of said real estate if such loan will have a maturity of less than ten years and the instrument creating the lien will provide for installment payments insufficient to amortize forty per cent of the principal of said loan before maturity but which installment payments would be sufficient to amortize forty per cent or more of the principal of said loan were the same to be made for a period of ten years.”

As I understand your request, you are particularly concerned with an interpretation of that part of Section 710-112 which you quote in your inquiry, which has to do with the exception set forth therein, as follows:

“* * * except that (1) any such loan may be made in an amount not to exceed sixty per centum of such appraised value of the real estate offered as security and for a term of not longer than ten years if the loan is secured by a mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize forty per centum or more of the principal of the loan within a period of not more than ten years, * * * .”

You inquire as to what percentage of the principal of a loan must be amortized if a bank were to make a real estate loan on a sixty per centum appraisal basis for a period of less than ten years. With that particular problem in mind, it might be well to consider the making of such a loan for, say, five years.

It is my opinion that the proper construction of said exception above quoted can be readily arrived at by interpreting said clause to mean that amortization of the loan must be at the rate of forty per centum of the principal of the loan based on a ten year loan. I think both the spirit and the letter of said clause favor such a construction.

The evident intent of the legislature in enacting such a provision of law was to provide for the amortization of a certain minimum amount of the principal of any loan secured by a lien on real estate, made on the basis of a principal loan not to exceed sixty per centum of the appraised value of the real estate pledged for such loan.

The logic of the proposition certainly points in that direction. A maximum period of ten years is provided for such type of loans; the minimum period for same is within the discretion of the bank making the loan in question.

As regards the installment payments on said loans, the provision of law in question reads as follows:

“* * * which installment payments are sufficient to amortize *forty per centum or more* of the principal of the loan *within a period of not more than ten years, * * * .”*

It would seem to follow from the foregoing wording of the statute, that, if such a loan is made for a period of, say, one year, four per centum of the principal amount of the loan must be amortized within

the period of one year. If such a loan is made for five years, twenty per centum of the principal amount of said loan must be amortized within the period of five years.

I am advised that said exception clause is a copy of a similar provision of Section 24 of the Federal Reserve Act as amended by the Banking Act of 1935, which governs loans made by National banks. There are no federal cases in point interpreting said language applying to National banks. The Comptroller of the Currency has never seen the necessity of issuing any departmental regulation interpreting said provision of law. However, I further understand that National banks, or certain of them, in the state of Ohio have been making one year loans on real estate on a sixty per cent appraisal basis under the above referred to provision of law, the terms of which loans, considering a concrete case, would provide substantially as follows:

R. E. Loan No.....

\$5200.00 , Ohio, , 193.....

For value received, each maker of this note promises to pay to Bank, of or order, at its Main office in , Ohio, FIVE THOUSAND TWO HUNDRED AND NO/100..... Dollars, with interest at the rate of 6% per centum per annum, computed quarterly on the first day of January, April, July and October of each year, until paid, both interest and principal being payable in lawful money of the United States of America in consecutive monthly installments of \$55.00 each, commencing on the first day of the next calendar month following the date of this note, and the balance, if any, one year after date hereof; all partial payments to be applied at the quarterly interest dates above mentioned to the payment of interest then due and the balance, if any, upon principal. Upon default in payment of any installment of principal or interest on this note or in any of the conditions, agreements, or stipulations of the mortgage securing same, then, at the option of the holder of this note, the entire amount of principal and interest remaining unpaid thereon shall at once become due and payable without further notice or demand, same being expressly waived, and thenceforth said entire amount shall draw interest at the rate of eight per centum per annum, payable quarterly, as aforesaid. Each maker of this note hereby authorizes any attorney at law to appear in any court of record in the State of Ohio, or in any other state or territory of the United States, after the above obligation becomes due, and waive the issuing

and service of process and confess judgment against any or all of the undersigned in favor of Bank of or any holder of this note, for the amount then appearing due, together with costs of suit; and thereupon to release all errors and waive all right of appeal, and stay of execution.

SECURED BY MORTGAGE ON REAL ESTATE.

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It would appear obvious that such a National bank making such a type of loan over a period of years must have been examined several times and said type of loans approved. It would seem, therefore, that loans of such a nature under a provision of law similar to the provision of our Ohio law have been approved in National banks in the above manner and no formal objection or question raised about such loans by Federal bank examiners. This would establish approval of same by way of administrative interpretation.

Our own Supreme Court has approved "administrative" interpretation. In the case of *State ex rel. vs. Brown*, 121 O. S., 73, the court said at pages 75 and 76:

"It has been held in this state that 'administrative' interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. *Industrial Commission vs. Brown*, 92 O. S., 309 * * *"

It is true that the "administrative" interpretation in question is not an Ohio one. However, it is a federal "administrative" interpretation of a law written into our banking law and a valuable and logical legal interpretation.

It is my opinion, in specific answer to your question, that, under the provisions of Section 710-112 of the General Code of Ohio, a loan secured by a lien on real estate may be made in an amount not to exceed sixty per centum of the appraised value of the real estate pledged as security for such a loan and for any period not to exceed ten years, the terms of which loan provide for installment payments sufficient to amortize it at the rate of forty per centum or more of the principal amount of such loan if made for a period of ten years. In other words,

for each year of such loan, there must be an amortization of four per centum or more of the principal amount of said loan.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1051.

APPROVAL, LEASE EXECUTED BY THE CITIZENS SAVINGS BANK, OF MARTINS FERRY, IN AND BY WHICH IT LEASES TO THE STATE OF OHIO CERTAIN PREMISES IN THE CITY OF MARTINS FERRY, BELMONT COUNTY, OHIO.

COLUMBUS, OHIO, August 23, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent communication with which you submit for my examination and approval a certain lease executed by The Citizens Savings Bank, of Martins Ferry, in and by which it leases to the State of Ohio, acting by and through you as Superintendent of Public Works and as Director of said department, certain premises in the city of Martins Ferry, Belmont County, Ohio, and more particularly described as "That suite of office rooms, numbered One (1), Two (2) and Three (3), on the second floor of the Citizens Bank Building, located on the South West corner of Fourth and Walnut Streets in said city." By this lease, which is one for the use of the Department of Industrial Relations of the State of Ohio, and is for a term of eighteen months beginning on the 1st day of July, 1937, and ending on the 31st day of December, 1938, it is provided that said lessee shall pay as rent for said premises the sum of \$600.00 per annum, in monthly installments of \$50.00 each, during the term of said lease.

This lease is one which you are authorized to take under the provisions of Section 154-40, General Code, which among other things authorizes you to acquire by lease office space in buildings for the use of state offices, boards and commissions. Inasmuch as the lease has been properly executed by said lessor and the terms and conditions of this lease are in all respects in conformity to law, this lease is found to be in proper form.