

Code fails to reveal any express provision authorizing permanent care of tubercular patients in any place or any institution unless such are approved by the state board of health. The General Assembly has made elaborate provisions for institutional care for persons suffering from tuberculosis (Sections 3140 to 3153-7, General Code), and inasmuch as the protection of other residents of the county is involved, it is my opinion that, the county commissioners have no authority to provide for the care and treatment of tubercular persons in any place or institution which is not approved by the state board of health.

Respectfully,

JOHN W. BRICKER,  
Attorney General.

2966.

BANK—MAY LOAN MONEY TO SUPERINTENDENT OF BANKS  
WHEN—MAXIMUM LOAN ALLOWED.

*SYLLABUS:*

*Section 710-122, General Code, does not prohibit a bank, organized and operating under the laws of this state, from making loans to the superintendent of banks in possession of the business and property of a bank for liquidation, which borrowings are made by the superintendent under section 710-95a, General Code, providing such lending bank does not loan to the superintendent, as statutory receiver of any particular bank, a sum in excess of 20% of its paid-in capital stock and surplus.*

COLUMBUS, OHIO, July 28, 1931.

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

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

"As Superintendent of Banks in charge of the liquidation of several banks under my jurisdiction, I desire to borrow money in accordance with the provisions of Section 710-95a of the General Code in order to make available for the depositors and creditors of such banks early dividends.

One state bank has expressed its willingness to make several loans to me in the capacity and for the purpose mentioned above. However, the question has arisen as to whether or not, if in the case of each separate liquidation the bank makes a loan to me in an amount equal to twenty per cent of its capital stock and surplus, my borrowings from this bank would entail a violation of Section 710-122 of the General Code of Ohio.

For example, 'A' bank, a corporation organized and transacting business under the laws of this state and having a capital stock and surplus in the aggregate amount of \$1,000,000, loans \$200,000 to the Superintendent of Banks in charge of the liquidation of 'X' bank and also \$200,000 to the Superintendent of Banks in charge of the liquidation of 'Y' bank. Each separate loan is within the statutory limitation,

but if both loans so made are such as must be considered as a loan to one person within the purview of Section 710-122, the same would evidently be excessive, since neither loan would fall within the exceptions mentioned in the last paragraph of Section 710-122.

I would appreciate your opinion as to whether or not loans to me under the circumstances mentioned would be in violation of the section referred to."

Section 710-95a, General Code, reads:

"The superintendent of banks, liquidating agent, receiver, or other person or persons lawfully in charge of the property and affairs of closed banks are authorized, upon the order of the common pleas court in and for the county in which the principal office of such bank is located, to borrow money and to issue evidences of indebtedness therefor and to secure the repayment of the same by the mortgage, pledge, transfer in trust and hypothecation of any or all of the property of such bank, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation as provided in section 710-97 hereof. Such loans may be obtained for the purposes of facilitating liquidation, protecting or preserving the assets in his charge, expediting the making of distributions to depositors and other creditors, providing for the expenses of administration and liquidation and aiding in the reopening or reorganization of such bank or its merger or consolidation with another bank or the sale of all of its assets. The superintendent of banks, liquidating agent, receiver or other person or persons lawfully in charge of the affairs of such bank, shall be under no personal obligation to repay any such loans so made and shall have power to take any and all action necessary or proper to consummate such loan and to provide for the repayment thereof and to give bond, when required, for the faithful performance of all undertakings in connection therewith. The superintendent of banks, liquidating agent, receiver, or other person or persons in charge of the affairs of such bank shall make application to said common pleas court for approval of such loan and the giving of security therefor. Notice of such application shall be given by publication once each week for two consecutive weeks, in each case upon any week day of the week, in a newspaper of general circulation in said county and by notice from the superintendent of banks, liquidating agent, receiver or other person or persons lawfully in charge of its affairs to such bank, by service of a copy thereof upon an officer or upon a majority of the directors acting at the time such bank was closed, of the time and place of making application to said court for such order. Hearing on such application shall be had not less than ten days after the first publication of such notice. At the hearing upon such application, any stockholder, depositor or other creditor of such bank shall have the right to appear and to be heard thereon. Prior to the obtaining of such court order, the superintendent of banks, liquidating agent, receiver or other person or persons lawfully in charge of the affairs of such bank may make application or negotiate for such loan or loans, subject to the obtaining of such court order."

Section 710-122, General Code, provides, *inter alia*:

"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. \* \* \*"

Your question is whether the superintendent of banks, in charge of the liquidation of bank X, and the superintendent of banks in charge of the liquidation of bank Y, is "one person" within the limitation of section 710-122, General Code, which prohibits a bank from loaning more than 20 per cent of its paid-in capital stock and surplus to "any one person, company, corporation or firm."

It is clear from the provisions of sections 710-89, et seq., General Code, that when the superintendent of banks takes possession of the business and property of a bank for liquidation, he becomes a statutory receiver with title to and right of possession of all of its assets. Broad powers are conferred upon him in dealing with those assets for the benefit of the depositors and other creditors.

It should be noted that section 710-95a, General Code, confers upon the superintendent of banks the power to borrow money only when he is "lawfully in charge of the property and affairs of closed banks." In his capacity of statutory receiver, the superintendent of banks may issue evidences of indebtedness for the money borrowed and "secure the repayment of the same by the mortgage, pledge, transfer in trust and hypothecation of any or all of the property of such bank \* \* \*." He may create a lien superior to any charge upon the bank's assets for expenses of liquidation. He may legally give bond for the faithful performance of all undertakings in connection with such a loan. The section expressly provides that the superintendent of banks shall not be personally liable to repay any such loans.

It is apparent from the language of the statute that when the superintendent borrows money under section 710-95a, General Code, he does so for the purposes of the particular bank in liquidation. The lender looks for payment to the assets of that bank and not to the superintendent personally. The evident purpose of enacting section 10-122, General Code, was to prevent excessive and improperly secured loans to a single borrower. The reason behind the statute would not prevent the loans in question, since the leading bank looks for its security to the assets of the respective banks on behalf of which the superintendent borrows the money.

Under section 710-95a, a liquidating agent, as well as the superintendent of banks, is authorized to borrow money for the purposes enumerated in that section. It would be absurd to say that bank A might loan to each of the respective liquidating agents of banks X and Y, any amount not in excess of 20 per cent of its capital and surplus, whereas it might not make such loans to the superintendent of banks, in charge of the liquidation of each of them, merely because he is "one person."

Although sections 710-95a and 710-122, General Code, were enacted at different times, they relate to the same subject and therefore must be construed *in pari materia*. If possible the latter section should not be given a construction which would impair the operation of the former. While the bare words

"any one person" as used in section 710-122, General Code, would include the superintendent of banks, although acting in two distinct capacities, that construction should not be adopted, since it would lead to an absurd and unreasonable result. See *State ex rel vs. Edmonston*, 89 O. S., 93; *In re Murray*, 20 N. P. (n. s.) 305; *In re Hesse*, 93 O. S., 230. It should be remembered that the entire object of statutory construction is to ascertain the intention of the legislature. *Barth vs. State ex rel.*, 107 O. S., 154; *Ohio Savings & Trust Co. vs. Schneider*, 25 O. A., 259.

Specifically answering your question, it is my opinion that section 710-122, General Code, does not prohibit a bank organized and operating under the laws of this state from making loans to the superintendent of banks in possession of the business and property of a bank for liquidation, which borrowings are made by the superintendent under section 710-95a, General Code, providing such lending bank does not loan to the superintendent, as statutory receiver of any particular bank, a sum in excess of 20 per cent of its paid-in capital stock and surplus.

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

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2967.

APPROVAL, CONTRACT BETWEEN THE NEW YORK CENTRAL RAILROAD COMPANY AND THE DEPARTMENT OF PUBLIC WELFARE AND JOSEPH NEYER, JR., OF CINCINNATI, OHIO, FOR THE CONSTRUCTION OF SIDE TRACK AT LONGVIEW STATE HOSPITAL, AT AN EXPENDITURE OF \$1950.00.

COLUMBUS, OHIO, July 28, 1934.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the New York Central Railroad Company and The Department of Public Welfare and Joseph Neyer, Jr., of Cincinnati, Ohio, covering the construction by said railroad company of a side track 258 feet in length to the Power House, Longview State Hospital, Cincinnati, Ohio. Such contract calls for an estimated expenditure of nineteen hundred and fifty dollars (\$1950.00) on the part of the State.

I have carefully examined the provisions of said contract, and find the same correct in form and legal and am approving the same.

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