1744.

BANKS AND BANKING—WHEN BANK REQUIRED TO DISCONTINUE USE OF WORD "TRUST" UNDER NEW BANKING ACT.

A corporation incorporated prior to July 11, 1919, *(the effective date of the original act revising and codifying the laws relating to the organization of banks; sections* 710-1 *et seq., G. C.,* 108 *O. L. Part I, p.* 80) *under a name which included the word "trust", but which at that time was not qualified to transact a trust business on account of its having failed to make the deposit with the state treasurer required by section* 9778 *G. C., is required to change its name so as to eliminate the word "trust" therefrom within two years from the effective date of the original act, rather than from the effective date of the act amending section* 710-3 *G. C.* (108 *O. L. Part II, p.* 1191).

COLUMBUS, OHIO, December 29, 1920.

HON. IRA R. PONTIUS, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date submitting a question arising under section 710-3 G. C., was duly received, and reads as follows:

> "The superintendent of banks of the state of Ohio, respectfully requests an opinion from the Attorney-General on the following set of facts:
>
> At what time must a bank using the word 'Trust' incorporated under the laws of the state of Ohio, for less than $150,000 capital, doing business in Cincinnati, Ohio, having the right under its charter to do a trust business, but not having made the deposit required of 'Trust Companies', cease using the word 'Trust', as provided in section 710-3?
>
> The above question arises out of a ruling of this department that section 710-3, as passed April 4, 1919, and as amended January 27, 1920, must be complied with within two years from July 11, 1919, which was the date that the original section 710-3 became effective.
>
> It is contended by a Cincinnati bank that they have until two years from the time that section 710-3, was passed January 27, 1920, becomes effective.
>
> The bank in question contemplates holding their annual stockholders' meeting December 31, 1920, and wish to know before that time whether or not they must comply with the ruling of this department, as I stated above."

Section 710-3 G. C., as amended January 27, 1920, (108 O. L. Part II, p. 1191) reads as follows:

> "The use of the *word* 'bank', 'banker', or 'banking', or 'trust', or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business is or may be conducted in this state, is restricted to banks as defined in the preceding section. All other persons, firms or corporations are prohibited from soliciting, accepting or receiving deposits, as defined in section 2 of this act and from using the word 'bank', 'banker', 'banking', or 'trust', or words of similar meaning in any foreign language, as a designation or name, or part of a designation or name, under which business may be conducted in this state. Any violation of this prohibition, after the day when this act becomes effective, shall subject the party chargeable therewith, to a penalty of $100.00 for each day during which it is committed or repeated.

Such penalty shall be recovered by the superintendent of banks by an action instituted for that purpose, and in addition to said penalty, such violation may be enjoined and the injunction enforced as in other cases.

Provided, however, that any corporation now incorporated under *the* name which includes the word 'trust', and which is qualified to transact a trust business, may continue the use of such word so long as it complies with the requirements of this act; provided, that every corporation incorporated under a name which includes the word 'trust' and is not qualified to transact a trust business is required to change its name so as to eliminate the word 'trust' therefrom within two years from the date when this act becomes effective during which period such company shall not be subject to the penalty of this section, *but nothing hercin shall prevent a title, guaranty and trust company from continuing the use of the word 'trust' in its name provided such company is qualified to do business under the provisions of section* 9851 *of the General Code."*

Original section 710-3 G. C. as passed April 4, 1919 (108 O. L. Part I, pp. 80, 81), is identical in every respect with the amendatory act, except that the under scored "word" was plural and the underscored "the" was "a" in the original act, and the other portions of the amendatory section which I have also underscored did not appear in the original act, but were introduced into the section for the first time by the amended act.

Your letter does not disclose the date of the incorporation of the bank referred to in your letter, but for the purpose of this opinion it is assumed that the bank was incorporated prior to the effective date of original section 710-3 G. C., to-wit, July 11, 1919. It is also assumed that the bank's articles of incorporation purports to empower it to accept trusts which may be vested in, transferred or committed to it by individuals or courts; and further, that the deposit referred to in your letter, and which the company failed to make, is the deposit that was referred to in section 9778 G. C. (see, now, section 710-150 G. C.) before its repeal by the new bank act (see, section 710-188 G. C.), of which act section 710-3 G. C. is a part.

Section 9778 G. C., just referred to, expressly provided that no trust company shall accept trusts which may be vested in, transferred or committed to it by an individual or court, until its paid in capital stock was at least $100,000, and until such corporations had deposited with the treasurer of state either $50,000 in cash (if its capital was $200,000 or less), or the substituted securities therein mentioned.

Since, as stated in your letter, the bank therein referred to did not make the deposit required of trust companies under section 9778 G. C., it, therefore, was not authorized or qualified to transact a trust business when original section 7110-3 G. C. became effective July 11, 1919, and hence was not authorized to continue the use of the word "trust" as part of its name. On the contrary, and by reason of the express mandate of the section, the bank was and is required to change its name so as to eliminate the word "trust" therefrom within two years from the date when the act became effective.

The contention of the bank, as I understand it, is that the words "this act" (not, "this *amendatory* act"), found in both the original and amendatory acts, refer solely and exclusively to the amendatory act (108 O. L. Pt. II, p. 1191), and not to the original act of which original section 710-3 G. C. was a part, and that, as a consequence, the bank has two years from the effective date of the amendatory act within which to change its name, rather than two years from the date when the original act became effective. This contention is unsound and cannot be sustained.

The act passed January 27, 1920, is not a new and independent act, nor one

revising and codifying the laws relating to the organization of banking, but is instead an amended act limited in its scope to amending, first, one section only of the original act, viz. section 710-3 G. C., and, second, section 9852 G. C.,—the latter of which relates to securities deposited by guarantee title and trust companies with the treasurer of state. As already indicated, the language of the amended act is identical in every respect with the language contained in original section 710-3 G. C., excepting only in three particulars, viz., (a) that the word "words" in the original act has been made singular in the amended act; (b) the article "a" has been changed to "the", and, (c) the last clause (which is underscored in the quotation, supra) has been added. These changes, and the addition referred to, are immaterial and have no bearing on the question under consideration. In other words, any corporation incorporated under a name which included the word "trust", and which was not qualified to transact a trust business, was required by original section 710-3 G. C. to change its name so as to eliminate the word "trust" therefrom within two years from the date when the act became effective, and the identical provision, and in the exact words, was retained in the section as amended.

The law applicable to the situation thus presented is well settled in this and other states, and requires that the bank mentioned in your letter eliminate the word "trust" from its name within two years from July 11, 1919,—the effective date of the original section 710-3 G. C.

In 25 Ruling Case Law, page 907, the law is stated as follows:

> "When a statute continues a former statute law, the law *common to both* acts dates from its first adoption, and only such provisions of the old act as are left out of the new one are gone, and only new provisions are new laws. * * * When an act is amended 'so as to read as follows' the part of the original act which remains unchanged is considered as having continued in force as the law from the time of its original enactment, and the new portion as having become the law only at the time of the amendment."

In 1 Lewis' Sutherland, Statutory Construction (2 Ed.), section 237, the effect of an amendment such as we have under consideration, is stated as follows:

> "The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act."

At section 238, the same authority says:

> "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time. The intention manifested is the same as in an amendment enacted in the form noticed in the preceding section."

In re Allen, 91 O. S., 315, the court held:

> "Where there is re-enacted in an amendatory act provisions of the original statute in the same or substantially the same language and the original statute is repealed in compliance with section 16, Article II of

the constitution, such provisions will not be considered as repealed and again re-enacted, but will be regarded as having been continuous and undisturbed by the amendatory act."

In State vs. Spiegel, 91 O. S. 13, the court held:

"Where an amendatory act contains the entire section or sections as amended and repeals the original section or sections in compliance with section 16, Article II of the constitution, the amended sections are to be given the meaning they would have had if they had read from the beginning as they do as amended, except where such construction would be inconsistent with the manifest intent of the legislature."

In the latter case, the court also held that the words "heretofore" and "hereafter" found in both the original and the amended section, referred to the date of the passage of the original act.

In Ely vs. Holton, 15 N. Y. 595, the court held:

"The effect of an amendment of a statute made, by enacting that the statute 'is amended, so as to read as follows,' and then incorporating the changes or additions with so much of the former statute as is retained, is not that the portions of the amended statute which are merely copied without change are to be considered as having been repealed and again re-enacted, nor that the new provisions or the changed portions should be deemed to have been the law at any time prior to the passage of the amended act. The part which remains unchanged is to be considered as having continued the law from the time of its original enactment, and the new or changed portion to have become law only at and subsequent to the passage of the amendment.

The word 'hereafter', occurring in a statute amended in the manner above described, is to be construed distributively. As to the original provisions, it means subsequent to the time of their enactment; as to the new portions, it means subsequent to the time the amendment introducing them took effect."

In re Prime, 136 N. Y. 347, the court held:

"When a statute amends a former statute 'so as to read as follows,' it operates as a repeal by implication of inconsistent provisions in the former law and of provisions therein omitted in the latter. When the amendatory act re-enacts provisions in the former law, either *ipsissimis verbis* or by the use of equivalent though different words, the law will be regarded as having been continuous, and the new enactment, as to such parts, will not operate as a repeal, so as to affect a duty accrued under the prior law, although, as to all new transactions, the later law will be referred to as the ground of obligation."

The doctrine or rules announced in the foregoing authorities also apply to penal as well as civil statutes, "for", as was well said in State vs. Gumber, 37 Wis., 298, 393, "it is wholly a question of legislative intent, which is as manifest and clear in the one case as in the other." See, also, State vs. Wisc., 15 Neb. 448.

In McKibben vs. Lester, 9 O. S. 628, it was held that the words "herein provided", used in an amendatory act, referred to the original act as amended, and

not alone to the amended act; and Hann vs. Kunzi, 56 O. S. 537, is authority for the proposition that an amended section becomes part of the original act, and is to be read and construed as if embodied into the place of the repealed section in the original act.

In Wright vs. Cunningham, 115 Tenn, 445, it was held that the words "this act" in an amending statute, apply and have reference to the original statute as amended, and not to the amendment itself.

You are therefore advised that the bank referred to in your letter is required under section 710-3 G. C. to change its name so as to eliminate the word "trust" therefrom within two years from July 11, 1919 (the date the new bank act became effective), and that it does not have two years from the effective date of amended section 710-3 G. C. within which to make the change.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1745.

APPROVAL, BONDS OF VILLAGE OF McDONALD, OHIO IN AMOUNT OF $1,474.75 FOR SIDEWALK IMPROVEMENT.

COLUMBUS, OHIO, December 29, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1746.

APPROVAL, BONDS OF VILLAGE OF McDONALD, OHIO, IN AMOUNT OF $4,484.10 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 29, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1747.

APPROVAL, BONDS OF VILLAGE OF McDONALD, OHIO, IN AMOUNT OF $17,240.20 FOR STREET AND SEWER IMPROVEMENTS.

COLUMBUS, OHIO, December 29, 1920.

Industrial Commission of Ohio, Columbus, Ohio.