

delinquent, as prescribed by Section 5713 of the General Code." (Italics the writer's.)

Such section authorizes the payment of taxes in installments but specifically provides the manner in which such installments may be paid. I would call your attention to the language which I have italicized. Such section expressly provides that the installments shall be paid in no other manner than as set forth in the section; that is, when there stands charged against the taxpayer or an item of real property owned by him he may pay in the first installment the total amount of current taxes and in addition thereto one-fifth of the delinquencies and similarly in each of the four subsequent installments the current tax installment and one-fifth of the delinquencies, the last of which payments includes the cost of certification. Since your inquiry is as to the payment of taxes in installments other than as authorized by this section it is apparent that I must answer your inquiry in the negative.

In passing, I might call your attention to my opinion rendered under date of February 2, 1932, being No. 4019, in which I held, in construing the provisions of Section 2672, General Code, that by reason of the limitation contained in Section 3 of Am. S. B. 326 as enacted by the 89th General Assembly, Section 2672, General Code, did not authorize the receipt of any delinquent taxes in installments other than those becoming delinquent at and after the August 1930 settlement.

Specifically answering your inquiries it is my opinion that:

1. When delinquent taxes stand charged upon the tax list and duplicate in the possession of the county treasurer, the county treasurer has no authority to accept the payment of the current tax against which no penalty has been assessed without at the same time receiving not less than one-fifth of the amount of the delinquencies so standing charged.

2. When there stands charged upon the delinquent tax duplicate in possession of the county treasurer delinquent taxes against a certain item of real property as well as an item of current taxes the county treasurer is not authorized to accept the payment of delinquent taxes without at the same time receiving payment of the item of current taxes.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4724.

APPROVAL, REORGANIZATION PLAN OF THE SECURITY-HOME
TRUST COMPANY OF TOLEDO, OHIO.

COLUMBUS, OHIO, November 3, 1932.

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

DEAR SIR:—You recently submitted to me what is denominated as "The Reorganization Plan of the Security-Home Trust Company" of Toledo, Ohio, with the request that I give you my opinion as to whether any legal difficulties would be encountered in the consummation of the plan. Since receiving your letter, and after conferences with the representatives of the reorganization

committee, certain changes in the plan have been agreed upon and I have just received the plan as redrafted. It is too lengthy to set forth herein in full, but, for the purposes of this opinion, it will be sufficient to set forth what is denominated as the "Summary of Plan" commencing on page five. This summary is as follows:

"It is proposed that the Superintendent of Banks borrow \$3,000,000.00 from the Reconstruction Finance Corporation on a loan secured by collateral of \$6,000,000.00, pursuant to this plan of reorganization.

A new company, herein referred to as the Reorganizing Corporation will be organized with a nominal capital of \$500.00. This corporation will then purchase all of the assets, not including sums received in payment of stockholders' liability or any rights of the Superintendent of Banks or depositors or creditors of the Security-Home to receive any sums on account of stockholders' liability, nor any right of action belonging to the Superintendent or any creditor or stockholder of the Security-Home to any action of misfeasance or malfeasance of any officer or director of the Security-Home, which rights are reserved to the Superintendent and/or the creditors and stockholders of the Security-Home by the payment of approximately \$3,000,000.00 in cash to the creditors of the old bank, payable by check and/or by deposit credit in a new bank, and by giving to the Superintendent the certificates of indebtedness, if desired, for the balance of the unliquidated liabilities to the depositors, payable to the extent of cash realized upon the conversion of said assets less direct expenses.

The Reorganizing Corporation will have the power to make investments and to do all things necessary for the preservation and enhancement of its resources. Pursuant to the plan of reorganization, it will immediately organize a new bank and purchase all of its capital stock for \$1,000,000.00. It is proposed herein that of the total paid in to the new bank one-half, or \$500,000.00, shall represent the par value of the stock, and the remaining one-half, or \$500,000.00, shall represent paid-in surplus, and that this capital be divided into 20,000 shares having a par value of \$25.00 each with a paid-in surplus of \$25.00 per share.

The Reorganizing Corporation will then sell all of its assets, subject to the claims of the creditors against them, to the new bank, reserving from said sale its stock in the new bank and also some of the bonds having a book value of \$1,500,000.00 and a market value of approximately \$800,000.00. The bonds thus reserved will be held by the Reorganizing Corporation for the purpose of meeting any assessment against the stock which it owns in the new bank, and trust company if organized later, in the event of any such future liability. Thereafter, the Reorganizing Corporation will make no further distributions to the creditors which will diminish its resources, exclusive of its stock in the new bank and trust company, to a realizable value of less than the par value of the bank and trust company stock then owned.

The new bank will then make payment of the 15% dividend to the creditors of the old bank by cash and/or by deposit credit on its books.

By virtue of the loan from the R. F. C. and the reorganization, the creditors of the old bank will receive a dividend which would not be possible otherwise, and will save themselves the terrific loss of liquidation and restore the value of the assets from a liquidating to a going basis. The resources of the old bank now appear to belong solely to its creditors. After the reorganization, the resources of the old bank will still belong to all of the old creditors. The bank will belong to all of them through the ownership of its stock by the Reorganizing Corporation who in turn is liable to the old depositors for the amount of its resources. As stated, the position of the depositors is unchanged as far as their relation to the resources in which their equities lie, except that the value of these resources will be immediately enhanced by the excess of going values over liquidating values."

As will be noted, the plan contemplates what is described as a sale of the assets of the bank and a subsequent disposition thereof in the manner described in the outline just quoted. There can be little doubt of the power of the Superintendent of Banks, with the approval of the Common Pleas Court, to sell any or all of the assets of the bank. Section 710-95 of the General Code grants specific authority to the Superintendent to sell, upon order of the Common Pleas Court, "the real estate and personal property of such bank, on such terms as the court shall direct." Courts have held that similar authority covers the transfer by way of sale of all the assets of a bank including any cash which may be in the hands of the Superintendent of Banks.

Because of certain features of the plan which need not here be detailed, there may exist doubt as to the right to effectuate the proposed sale merely upon the approval of the Common Pleas Court. See *Jackson, et al., vs. McIntosh*, 12 Fed., 2d Series, 676. Any difficulties which might be encountered in this respect are, however, dissipated by the provision of the plan respecting consents of depositors, found on page twelve, which provision is as follows:

"It is proposed to make a general canvass of the depositors and creditors of the bank, and the success of the plan is dependent upon securing the consents of all or substantially all of such depositors and creditors. If, however, in the judgment of the committee, approved by the Superintendent of Banks, a sufficient number of consents have been obtained to insure the success of the plan, it is proposed that the Superintendent apply to the Court of Common Pleas of Lucas County, Ohio, for authority to effectuate the sale of the assets of such bank pursuant to this plan and to make provision for satisfaction of the claims of non-consenting depositors and creditors out of the assets so sold in such manner as will meet the approval of the Superintendent of Banks and said Court of Common Pleas. The consent to be signed by depositors and creditors shall be in the form hereto attached and marked 'Exhibit D'."

The assets of a bank in liquidation are held by the Superintendent of Banks virtually in trust for the benefit of depositors and creditors. It is obvious, therefore, that, with the consent of all depositors and creditors, those assets may be utilized in any manner which in itself is not unlawful. Since the plan contemplates either that the consent of all depositors and

creditors shall be obtained or that claims of those who do not consent shall be satisfied, the possibility of objection by those interested in the assets is removed.

I am further advised that it is proposed that stockholders, who have a residual interest in these assets after all claims of creditors and depositors are satisfied, are to be advised of the proposed action, and it is my suggestion that in the application for authority to make the sale, the court be asked for an order to show cause directed to all stockholders so that the possibility of an objection on this score may be obviated.

In view of what has been said, I am of the opinion that the plan, if consummated along the lines indicated, will be in all respects legal. It is to be noted that provision is to be made for the satisfaction of the claims of those who do not consent to the plan at the time the order authorizing the sale of assets is sought. If any questions arise in connection with this matter, I will be glad to advise with you thereon, and I also will be very happy to appear in court in your behalf in support of such application for authority to sell.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4725.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN
ASHTABULA COUNTY, OHIO.

COLUMBUS, OHIO, November 4, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

4726.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN
TRUMBULL COUNTY, OHIO.

COLUMBUS, OHIO, November 7, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*