

Conservation Commissioner and by the lessee above named in the manner required by law. I also find, upon examination of this lease, and of its terms and provisions, that the same are in conformity with the provisions of Section 471, General Code, and with all other statutory provisions relating to the execution of 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, all of which are herewith inclosed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

128.

APPROVAL, NOTES OF AMANDA VILLAGE SCHOOL DISTRICT, FAIRFIELD COUNTY, OHIO—\$3,750.00.

COLUMBUS, OHIO, February 10, 1933.

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

129.

APPROVAL, NOTES OF SMITH TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$3,500.00.

COLUMBUS, OHIO, February 10, 1933.

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

130.

SAVINGS BANK—MAY NOT INVEST IN INVESTMENT TRUST SHARES
—IMMATERIAL THAT SECURITIES COMPOSING TRUST RES CON-
FORM WITH SECTION 710-140 G. C.

SYLLABUS:

A savings bank may not invest in investment trust shares or units even though the securities composing the trust res conform to the requirements of the provisions of Section 710-140, of the General Code.

COLUMBUS, OHIO, February 11, 1933.

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

DEAR SIR:—Your request for opinion is as follows:

"A. Inc. is a depositor under a fixed trust agreement creating Trustee Shares, The B. Trust Company, being trustee.

This indenture creates a fixed trust a unit of which consists of shares of stock varying in amount, in various companies.

Under the provisions of the indenture, each unit is divided into six thousand beneficial interests, known as Trust Shares, and the owner of each Trust Share, as I understand, is the beneficial owner of an undivided interest in each share of stock comprising a unit of the deposited property.

Section 710-140 of the General Code of Ohio, enumerates the securities in which a savings bank may invest its funds.

You will, therefore, please advise me whether or not a savings bank may invest in Trustee Shares, providing the underlying securities of the trust conform with the provisions of Section 710-140, of the General Code of Ohio."

Section 710-140 of the General Code, in so far as applicable to your inquiry, reads:

"A savings bank may invest its funds in:

* * * * *

(b) Stocks of companies, upon which or the constituent companies comprising the same, dividends have been earned and paid for five consecutive years next prior to the investment and stocks of companies taken on a refinancing plan involving an original investment, which was legal at the time it was made; provided, every such investment shall be authorized by an affirmative vote of a majority of the board of directors of such savings bank.

No purchase or investment shall be made in the stock of any other corporation organized or doing business under the provisions of section 710-41 or section 710-180 of the General Code or of the national banking act of the United States.

* * * * *

It is to be noted that Section 710-140, supra, enumerates fifteen types or classes of securities in which a savings bank may invest its funds.

In order to answer your query it is necessary to interpret this section of the statute. The rule of statutory construction applicable to this type of statute has been laid down by the Supreme Court of Ohio in the case of *Weirick vs. Lumber Company*, 96 O. S., 386, 397 in the language of Judge Wanamaker:

"It is an old rule of construction that where a statute specifically and expressly mentions certain things, other things belonging to the same class, or occurring at the same time, are excluded. In short, when a statute makes certain definite things mandatory, the presumption is that the other things associated therewith are not mandatory.

The old Latin maxim *expressio unius est exclusio alterius* has become a primary and well-settled rule of statutory construction."

This rule of construction has been consistently followed by the courts and is reiterated in *Cincinnati vs. Roettinger*, 105 O. S., 145.

I am therefore of the opinion that a savings bank cannot invest its funds in any other type of securities than those mentioned in such section of the statute.

In answer to your specific question, your attention is directed to an opinion of my predecessor in office construing Section 9662 of the General Code, under date of October 18, 1921 (Opinions of the Attorney General for 1921, Volume 2, page 919) from which I would quote the following language appearing on page 921:

"The question as thus assumed may be put as follows:

Is an interest-bearing obligation secured by a deposit of other interest-bearing obligations, which in turn are secured by real estate mortgages an 'interest-bearing obligation secured by real estate mortgages,' within the meaning of Section 9662 of the General Code?

In the opinion of this department, a negative answer must be given to this question. Section 9662 is very explicit. The security for the interest-bearing obligation must be the real estate mortgage. This security must be direct and, in addition, must 'in all respects comply with, and be within the rules adopted for making mortgage loans by the corporation making such investments.' It is impossible to say that the collateral trust notes in question comply with these requirements; they are not directly secured by real estate mortgage; in case of any default in the payment of the principal or interest of any such collateral trust note, there could be no immediate recourse to the land, and this of itself, in the opinion of this department, is sufficient to take the case out of the application of Section 9662."

It is true that this opinion dealt with a collateral trust bond issue in which the trust res was composed of mortgages rather than an investment trust, which distinction I shall later discuss.

I also call your attention to an opinion of my predecessor in office under date of March 4, 1927 (Opinions of the Attorney General for 1927, Volume 2, page 242), construing Sections 9660, 9661 and 9662 of the General Code, as to whether a building and loan company could invest its surplus funds in "participation certificates." The syllabus of this opinion is as follows:

"A building and loan association is not legally authorized to invest any of its surplus funds in any securities other than those mentioned in Sections 9660, 9661 and 9662 of the General Code.

A building and loan association is not legally authorized under Section 9662 of the General Code to invest any of its surplus funds in 'participation certificates' which are essentially the same as collateral trust certificates."

While these opinions of my predecessors concern building and loan companies and construe different statutes than that referred to in your request and concern securities of different names, nevertheless the purpose of the statutes is similar and the types of securities are essentially similar. The reasoning in said opinions is apparently sound and is helpful in disposing of the question presented.

A "collateral trust bond" is usually regarded as a "negotiable instrument" the payment of which is secured by a deposit of the securities by the trust upon terms and conditions described in an indenture, which also defines the method

of subjecting the collateral to the payment of the obligation upon the default of the maker.

By "participation certificate" is usually meant an instrument containing a declaration of trust by a person or corporation who or which has taken the legal title to a parcel of real estate which is subject to a long term lease, that he or it holds an undivided interest as evidenced by such certificate, in such property and the rents received therefrom, for the owner of such certificate and will account therefor in the manner and form set forth in such certificate. The rights and duties of the trustees are usually set forth in a separate indenture.

By "certificate of beneficial interest in an investment trust" is usually meant an instrument containing a declaration of trust of a person or corporation who or which has taken title to certain securities, that he or it holds an undivided interest in such securities and the income arising therefrom as evidenced by such certificate in trust for the use and benefit of the owner of the certificate and that he or it will dispose of and account therefor to the certificate owner in the manner provided in such certificate or in the trust indenture referred to in such certificate.

Thus it is apparent that such "certificate of beneficial interest" does not materially differ from a "participation certificate" except as to the nature of the trust res.

In the opinion of my predecessor, rendered March 4, 1927, he held that a building and loan company could not invest its funds in "participation certificates." Such opinion of my predecessor would have been equally applicable to savings banks, and would prevent a savings bank from investing in "participation certificates" had it not been that the legislature specifically authorized the investment in that type of securities. See Section 710-140, paragraph (d), of the General Code. However, there is no specific mention of beneficial interest in investment trusts of the type referred to as in your letter, in such statute.

I am therefore persuaded to be of the opinion that although the trust res of such investment trust consists of securities of the types enumerated in Section 710-140, of the General Code, a savings bank has no authority to invest in shares or units of an investment trust.

Specifically answering your question, I am of the opinion that a savings bank may not invest in investment trust shares or units even though the securities composing the trust res conform to the requirements of the provisions of Section 710-140, of the General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

131.

TUBERCULOSIS HOSPITAL—HOW COMPENSATION OF MEMBERS OF BUILDING COMMISSION DETERMINED.

SYLLABUS:

1. *The cost of acquiring a site in connection with the construction of a county tuberculosis hospital and the compensation to members of a building commission, both of which items are payable from moneys received by the county from taxes raised or from the sale of bonds for such purpose, may be considered in*