

tion or co-partnership engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers, or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred (\$200.00) dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1996.

BANK—USE OF THE WORD “BANK”—SECTIONS 710-2 AND 710-3, GENERAL CODE, DISCUSSED.

SYLLABUS:

By virtue of the provisions of Section 710-3 of the General Code, the use of the word “bank” as a part of the designation or name of any person, firm or corporation doing business in this state is confined to banks, as defined in Section 710-2 of the General Code, and such use by any other person, firm or corporation is prohibited.

COLUMBUS, OHIO, April 20, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

“The attorney for the incorporators of a proposed Ohio corporation which it is desired to name THE OHIO BANK-SECURITIES CORPORATION has been advised by this office that the name is not available because of the use of the word BANK. Our advice in this connection was based upon G. C. 710-3.

The attorney for the incorporators contends that inasmuch as the word BANK is used in the adjective sense only the section of the Code mentioned does not apply.

We enclose copy of his letters under date of March 27th and April 3rd. Your advice is requested as to whether or not the word BANK can be used in a corporate name where it is used as an adjective and also whether or not the word BANK can be used as a hyphenated word with some other word.”

Without quoting the accompanying letters, I may state that the contention is made, in substance, that the word “bank” in this instance is used in its adjective sense only, qualifying the noun “securities”; that used in this manner there can be no deception of the public; that the prevention of deception is the object and purpose of the statute; and that the proposed name is the only way in which the business of the corporation can be aptly described.

Section 710-3 of the General Code, in so far as pertinent, is 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 (G. C. Section 710-2) 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. * * *

If the words of this section unnecessary to the consideration of this question were to be deleted, the section would read thus:

The use of the word "bank" as a 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 corporations are prohibited from using the word "bank" as a part of a designation or name under which business may be conducted in this state."

You will observe that the statute does not purport to restrict the prohibition to the use of the word "bank" as a noun and, accordingly, I find no warrant in the statute for concluding that the prohibition only extends to its use as a noun.

In fact it may be said that the use of the prohibited words in the statute is very often made in an adjective sense in the names of our state banks. This is particularly true of the words "banking" and "trust" both of which are frequently used preceding the word "company". One or two examples will suffice. The Peoples' Banking Company and The Union Trust Company are both financial institutions under the supervision of the state. It accordingly cannot be said that the mere fact that the word 'bank' is used in an adjective sense in this instance renders the prohibitory language of the statute inapplicable.

It remains to be determined whether or not the word used as modifying the noun "securities" is material. Doubtless it may properly be said that its use in this way would not be misleading to any one of average intelligence. At the same time, I can not say that the Legislature, in enacting this section, did not have in mind the protection of persons below the average intelligence. It is always dangerous to assume the existence of any general standard of intelligence and, hence, in my opinion it can not be said as a matter of law that the use of the word "bank" in the proposed name would be misleading to no one.

Section 710-3 of the General Code, supra, has already received consideration by the Supreme Court of Ohio in the case of *Inglis vs. Pontius et al.*, 102 O. S. 140. There a bond and investment firm used upon its letterhead, as descriptive of its business, the words "investment bankers." These words were not a part of the actual firm name and the decision of the case hinged upon the determination of whether or not the use of the word "bankers" was a part of a designation within the prohibition of the statute. The court, after discussing the laws applicable to banking institutions and the regulatory provisions with respect thereto, stated on page 147 as follows:

"It will be seen, therefore, that the use of the word 'bank' or 'banker' is a valuable adjunct to any business, and the protection of the provisions of the banking code should therefore be available only to those institutions which are subject to the regulations and restrictions imposed upon such institutions by the banking code.

If we are correct in this, then it is no hardship upon any person, firm or association not strictly classed as a banking institution to be denied the right

to use the word 'bank,' or a kindred term, as part of its name or designation. All of the foregoing defines the atmosphere which was being breathed by the General Assembly in framing and adopting Section 710-3, General Code, and should therefore aid in ascertaining the legislative intent."

With respect to the proper rule of construction to be applied to this section, the court, on page 148, said:

"Penal statutes, or those which restrain the exercise, regulate the conduct, or impose restrictions upon any lawful trade, occupation or business, should be strictly construed, and their scope should not be extended to include limitations not clearly expressed in their terms. Neither should a statute defining an offense be extended by construction to persons not included within its descriptive terms. In all other respects the general rules of construction applicable to remedial statutes have equal application to penal statutes; that is to say, they are to be fairly construed according to the expressed legislative intent without resort to verbal niceties or technicalities. There should not be any forced construction to exclude from their operation persons who are plainly within their terms; statutes designed to prevent fraud should be so construed as to prevent the evil aimed at. Strict construction does not override the requirement that words are to be given their usual and ordinary meaning and that the purpose and intention of the lawmaker should be carried into effect. It is an aid in ascertaining the legislative intent to consider the existing evil which it is intended to remedy.

The foregoing rule has been stated with some particularity and at some length because in the instant case counsel entertain widely different views and the decisions of the judges of the lower courts are widely divergent.

It cannot be doubted that gross frauds are daily practiced upon the public by the sale of worthless securities. Neither can it be doubted that the improper use of the words 'bank' and 'banker' can be made a valuable aid in such practices."

With respect to the question then before the court, it was concluded that judicial interpretation was necessary in view of the doubt of the proper definition of the word "designation." After an extended discussion of the meaning of this word, the court concluded that the use in the particular instance, was improper.

You will observe that the Supreme Court states the rule to be that "there should not be any forced construction to exclude from their operation persons who are plainly within their terms" having reference to the construction of penal statutes or sections of this character.

That is to say, that where the words of the penal statute are plain, there is no room for construction at all, and the courts are not at liberty to inquire into the advisability of the particular provision. This rule is stated in Southerland on Statutory Construction at page 315 as follows:

"When the meaning of a statute is clear, and its provisions are susceptible of but one interpretation, that sense must be accepted as the law; its consequences, if evil, can only be avoided by a change of the law itself to be effected by the Legislature and not by judicial construction."

In my opinion the present instance is clearly one for the application of the rule just quoted. The proposed corporation would certainly be using the word "bank" as a part of the designation or name under which its business would be conducted in this

state. This being true, I do not feel at liberty to go further to inquire into the advisability of applying the restriction in this instance. Doubtless the application of the prohibition in this instance is unnecessary to effectuate the general purpose back of the enactment of the section, but if this be so, the remedy lies with the Legislature and not, as the Supreme Court in the case quoted above stated, in a forced construction to exclude from the operation of the statute the corporation in question.

You are accordingly advised that, by virtue of the provisions of Section 710-3 of the General Code, the use of the word "bank" as a part of the designation or name of any person, firm or corporation doing business in this state is confined to banks, as defined in Section 710-2 of the General Code, and such use by any other person, firm or corporation is prohibited.

The suggested insertion of the hyphen between the words "bank" and "securities" would not in my opinion have any effect. The ordinary use of a hyphen is to connect two words and the word "bank" would still remain and be a separate word. It is of course obvious that these two words have not been so commonly used together as to entitle them to be joined together as a compound word. The truth of this is easily ascertained by reference to any of the standard dictionaries. This being true, the arbitrary insertion of a hyphen would not in my opinion authorize me to regard the word "bank" as not being used as part of the name of the corporation in question.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1997.

OFFICES—ASSISTANT COUNTY SUPERINTENDENT OF SCHOOLS AND
COUNTY ATTENDANCE OFFICER INCOMPATIBLE.

SYLLABUS:

A county board of education may not employ an assistant county superintendent as county attendance officer for the county school district, for the reason that it is physically impossible for one person to perform the duties of both positions, inasmuch as the entire time of the assistant county superintendent of schools is required by Section 7706, G. C., to be taken up in the performance of his duties as such assistant county superintendent.

COLUMBUS, OHIO, April 20, 1928.

HON. JOHN G. WORLEY, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—I am in receipt of your communication requesting my opinion as follows:

"A situation has arisen in Harrison County, upon which I am asked to obtain the opinion of the Attorney General's office.

May an assistant county superintendent of schools appointed by the county superintendent, act also under selection by the County School Board, in the additional capacity of county attendance officer? In the case in hand no additional compensation will be paid the individual as attendance officer the former officer's salary being saved to the county."