no language of such act which would indicate that the purpose is to render such natural resources more beautiful; the purpose is one of conservation and not of beautification.

There is yet another consideration in the organization of such districts which would indicate that it was not the intent of the legislature to exclude them from the operation of the tax. From an examination of such act it would appear that the territory being conserved is not defined by the limits of any municipal corporation. Within the boundaries may be included one or more municipal corporations as well as lands without all municipal corporations, as in the case of The Cleveland Metropolitan Park District in which the lands forming the park include lands in several municipal corporations as well as lands lying in townships outside of municipal corporations.

In the interpretation of statutes, where the general provisions of the act are broad enough to include all subjects within their purview, the provisions purporting to exempt certain things from their operation should be strictly construed. Black on Interpretation of Laws, §108; *State ex rel. Keller* vs. *Forney,* 108 O. S. 463, 467; *Jones* vs. *Crosswell,* 60 Fed. 2d., 827. That is, if the particular subject is not clearly exempted by the language of the exception clause, it must be held to be included within the general provisions. See *State ex rel. Keller* vs. *Forney, supra.*

This rule is all the more applicable to the interpretation of tax statutes, for it is to be presumed that all property is to share equally the burdens of taxation unless the language of the statute clearly requires a different interpretation.

Specifically answering your inquiry, it is my opinion that when a metropolitan park district operates one or more golf courses, and charges membership or green fees, such fees are subject to the tax levied by Section 5544-2, General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2217.

COUNTY COMMISSIONERS—UNAUTHORIZED TO ACCEPT MORTGAGES AS SECURITY FOR RETURN OF MONEYS DEPOSITED IN DEPOSITORY BANK WHEN.

SYLLABUS:

Section 2288-1, *General Code, does not authorize boards of county commissioners to accept mortgages executed by a depository bank, as mortgagor, on property owned by the bank, as security for the return of moneys deposited in such depository, even though the recited consideration in such mortgage and the penal sum thereof, is less than one-half of the appraised value of the mortgaged property.*

COLUMBUS, OHIO, January 25, 1934.

HON. LAWRENCE F. KELLAR, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"I should like your opinion on the following matter, i. e., as to whether or not boards of county commissioners are authorized by Section 2288-1 of the General Code of Ohio, to accept mortgages from banks, county depositories, as security for county funds, which said mortgages are given direct by the county depository on real estate (farms) held in fee simple by said bank, and which mortgage recites the consideration as half the appraised value of the farm, and providing that the same shall become null and void upon payment by the grantor to the said grantee, on demand, such sum or sums as the said grantee may deposit with it by virtue of said grantor being a county depository."

Your inquiry raises the legal question of whether Section 2288-1, General Code, authorizes the county to be the mortgagee under a mortgage to secure the depository account of the county. Such Section 2288-1, General Code, reads:

"In addition to the undertakings or security provided for in sections 2732, 4295, 7605 and 7607, it shall be lawful to accept first mortgages, or bonds secured by first mortgages bearing interest not to exceed six per cent. per annum, upon unincumbered real estate located in Ohio, the value of which is at least double the amount loaned thereon. If the amount loaned exceeds one-half the value of the land mortgaged, exclusive of the structures thereon, such structures must be insured in an authorized fire insurance company, or companies, in an amount not less than the difference between one-half the value of the land exclusive of structures, and the amount loaned, and the policy or policies shall be assigned to the mortgagee. The value of such real estate shall be determined by valuation made under oath by two resident freeholders of the county where the real estate is located, who are conversant with real estate values. There shall be deposited with said mortgage, an abstract of title made by some competent person or persons or company, accompanied by the opinion of a competent attorney, which opinion shall certify that the mortgage is a first lien upon the premises mortgaged, or said title shall be guaranteed by a company organized under, and which has complied with the provisions of section 9850 of the General Code."

Such section of such statute sets forth the following requirements as to the deposit of mortgages as security for depositories:

1. The mortgage must be a first lien on unincumbered real estate located in Ohio.

2. The value of the real estate must be not less than twice the amount loaned on security of the mortgage.

3. If the amount secured by the mortgage is in excess of one-half of the land exclusive of the buildings, the buildings must be insured for an amount not less than the difference of one-half the value of the land and the principal amount of the mortgage deposited.

4. The value of the real estate must have been ascertained by at least two competent resident freeholders.

The language of the section appears to fix the qualification of the mortgage to be deposited on the amount of money *loaned on security of a mortgage.*

A real estate mortgage, in Ohio, is any conveyance of real property as security for the repayment of money *or the performance of an obligation* conditioned to

become void upon the performance of such obligation. *Hoffman* vs. *Mackall,* 5 O. S. 124; *Exr.'s of Schwarts* vs. *Leist,* 13 O. S. 419; *Hurd* vs. *Robinson,* 11 O. S. 232.

It is thus seen that there are two types of mortgages recognized by the courts of Ohio. First, those given for the repayment of money; second, those given as security for the performance of some other obligation.

A mortgage of the type described in your inquiry, is not given as security for the repayment of a sum of money loaned thereon, in the strict sense of the term; but is rather a mortgage given as security for the faithful performance of the obligations of the depository contract. It is of the type referred to in commercial language as "an indemnity mortgage."

If a foreclosure suit were to be filed by reason of its default, the mortgagee would not necessarily recover the face amount of the mortgage, for a mortgage is but an incident to the obligation and not the obligation itself. *Ladve* vs. *Detroit & Milwaukee R. R. Co.,* 13 Mich. 380; *Kernohan* vs. *Manss,* 53 O. S. 118; *Kernohan* vs. *Durham,* 48 O. S., 1. An indemnity mortgage can not be enforced by the mortgagee unless there has been some loss suffered by him. *Bauer* vs. *Nichol,* 3 O. App. 308.

While I am cognizant of the fact that courts have on numerous occasions held that the relation between a bank and its general depositors is that of debtor and creditor—*Fidelity & Casualty Co.* vs. *Union Sav. Bkg. Co.,* 119 O. S. 124; *Ward* vs. *Fulton,* 125 O. S. 382; *McDonald* vs. *Fulton,* 125 O. S. 507; *Blakley, Rec'r.* vs. *Brunson,* 286 U. S. 254, yet it could scarcely be said that the mortgages in question were security for any money loaned thereon, for the moneys in the depository are withdrawn from time to time and new moneys are deposited from time to time. If we were to consider the mortgage as security for any particular moneys, the mortgage would necessarily be cancelled by the repayment of those particular moneys and would not secure the repayment of any new deposits.

In an opinion of my immediate predecessor in office (Opinions of the Attorney General for 1931, page 1440) the term "amount loaned" as used in Section 2288-1, General Code, was defined in the second paragraph of the syllabus, as follows:

> "The words 'amount loaned' as they appear in Section 2288-1, General Code, should be construed to mean the amount owing on a mortgage at the time it is tendered as security, by favor of the statute."

The evident intent of the legislature in the enactment of Section 2288-1, General Code, is to put in the hands of the subdivision readily salable mortgages which the subdivision may, upon a breach of contract by the depository, sell and save it harmless by reason of such default. This intent is further shown by the enactment of House Bill No. 706 by the 90th General Assembly, 115 O. L. 611. (§§2293-38 to 2293-42 C. C.) Section 2293-38, General Code, reads as follows:

> "In the case of any default, whether occurring before or after the passage of this act, on the part of a bank in its capacity as depositary of the money of any county, municipal corporation, township or school district, the county commissioners of such county, the council of such municipal corporation, the trustees of such township, and the board of education of such school district may and are hereby authorized, in lieu

of immediately selling the securities received and held as security for the deposit of such money under authority of sections 2732, 4295, 7605, 7607 or 2288-1 or any other sections of the General Code, to retain the same, collect the interest and any and all installments of principal thereafter falling due thereon, and to refund, exchange, sell or otherwise dispose of such securities, or any of them, at such times and in such manner as such commissioners, council, township trustees, or board of education may determine to be advisable, with a view to conserving the value of such securities for the benefit of such county, municipal corporation, township or school district, and for the benefit of the depositors, creditors and stockholders or other owners of such bank."

Section 2293-38, General Code, specifically authorizes the subdivision to sell the securities mentioned in Section 2288-1, General Code, in the event of a default by the depository, or to refund them. This section is, in some respects, in pari materia with Section 2288-1, General Code. If the securities deposited pursuant to Section 2288-1, General Code, are security mortgages, the authority of Section 2293-38, General Code, to sell or refund them would be a nullity, for the security mortgage would have no value in and of itself, until the loss is ascertained.

I am therefore of the opinion that Section 2288-1, General Code, does not authorize boards of county commissioners to accept mortgages executed by a depository bank, as mortgagor, on property owned by the bank, as security for the return of moneys deposited in such depository, even though the recited consideration in such mortgage and the penal sum thereof is less than one-half of the appraised value of mortgaged property.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2218.

APPROVAL, CERTAIN WARRANTY DEED TO LAND IN MIAMI TOWNSHIP, MONTGOMERY COUNTY, OHIO, EXECUTED BY C. F. KETTERING, INC.

COLUMBUS, OHIO, January 25, 1934.

The Ohio State Archaeological and Historical Society, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication, submitting for my examination and approval, a certain Warranty Deed executed by C. F. Kettering, Incorporated, a corporation organized and existing under the laws of the State of Delaware, purporting to convey to The Ohio State Archaeological and Historical Society, a certain tract of land situated in the northwest quarter of Section 30, Town 2, Range 5, Miami Rivers Survey in Miami Township, Montgomery County, Ohio, and are particularly described as follows:

"Beginning at a planted stone in the south line of the northwest quarter of Section 30, at the southeast corner of the 8.41 acre tract