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1. BANKS—BANKERS TRUST COMPANY AND COMMERCIAL NATIONAL BANK AND TRUST COMPANY, NEW YORK, LICENSED TO DO A TRUST BUSINESS IN OHIO—MERGER—NEW YORK BANKING LAW—SECTIONS 710-88, 710-151 G. C.

2. EACH OF CONSTITUENT CORPORATIONS HAD ON DEPOSIT $100,000.00 PRIOR TO MERGER—BANKERS TRUST COMPANY — RESULTING CORPORATION — MUST BE DEEMED, FOLLOWING MERGER, TO HAVE ON DEPOSIT $200,000.00—SECTION 710-150 G. C.

3. MERGER CAN NOT BE DEEMED TO EFFECT "RETIREMENT FROM THIS STATE"—EITHER CONSTITUENT CORPORATIONS—EXCESS OF DEPOSIT OVER AMOUNT REQUIRED BY LAW TO BE MAINTAINED IN AMOUNT OF $100,000.00—MAY BE WITHDRAWN BY BANKERS TRUST COMPANY WITHOUT PROCEEDING UNDER SECTION 710-155 G. C.

SYLLABUS:

1. Where the Bankers Trust Company, a New York State Bank, and the Commercial National Bank and Trust Company, existing under the laws of the United States, both licensed to do a trust business in Ohio under the provisions of Section 710-151, General Code, enter into a merger agreement whereby the Commercial National Bank and Trust Company is merged into the Bankers Trust Company, which latter company receives into itself such merged corporation, the effect of such action, under Section 602, New York Banking Law, is to continue in existence the Bankers Trust Company in its same corporate entity; and the provisions of Section 710-88, General Code, cannot be deemed to operate in such a way as to constitute the resulting corporation in such merger a new corporate entity. (Opinion No. 1810, Opinions of the Attorney General for 1930, p. 668, distinguished.)

2. In such case, where each of the constituent corporations had on deposit prior to such merger a deposit of $100,000, under the provisions of Section 710-150, General Code, the resulting corporation, The Bankers Trust Company, must be deemed, following such merger, to have on deposit the amount of $200,000.

3. In such case, the merger cannot be deemed to effect the "retirement from this state" of either of the constituent corporations within the meaning of Section 710-155, General Code; and the excess of such deposit over the amount required by law to be maintained, in the amount of $100,000, may be withdrawn by the Bankers Trust Company without following the procedure provided in said section.

Columbus, Ohio, September 10, 1951

Hon. Thurman R. Hazard, Superintendent of Banks
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Commercial National Bank and Trust Company of New York, New York, a national banking association then doing business in the city of New York, qualified as a foreign trust company under the provisions of the Ohio General Code, which qualification is still in effect. As a part of such qualification, the Commercial National Bank and Trust Company now has on deposit with the Treasurer of State of the State of Ohio, $100,000 of United States Treasury Bonds. The Bankers Trust Company, a New York state banking and trust company doing business in the city of New York, New York, has been for some time and now is qualified as a foreign trust company under the provisions of the Ohio General Code, and as a part of such qualification, now has on deposit with the Treasurer of State, of the State of Ohio, $100,000 of United States Treasury Bonds.

"Under date of April 19, 1951, Bankers Trust Company and the Commercial National Bank and Trust Company executed

and delivered a plan and agreement of merger, which became effective at the close of business May 25, 1951. By the terms of such plan and agreement of merger, and the applicable statutes of the State of New York and of the Congress of the United States (being respectively paragraph 4 of section 136 of the Banking Law of the State of New York and Section 214b of Title 12 of the United States Code), the Commercial National Bank and Trust Company was merged into Bankers Trust Company with the latter constituting the continuing or resulting corporation, with all of the property rights, powers, and franchises of the Commercial National Bank and Trust Company being vested in Bankers Trust Company and with the Bankers Trust Company, by virtue of statute, being considered the same business and corporate entity as the Commercial National Bank and Trust Company.

"Both the Commercial National Bank and Trust Company and the Bankers Trust Company were doing a trust business in Ohio immediately prior to the time of the merger.

"Your opinion is respectfully requested on the following questions pertaining to the case above stated:

"(1) Is the Bankers Trust Company required, as a result of such merger, if it accepts trusts of property in Ohio, to qualify in Ohio as a new foreign trust company under the provisions of the General Code of Ohio and to make a new or another deposit of $100,000 under the provisions of Section 710-150 thereof in addition to such deposit made by the Bankers Trust Company before the merger? (See Opinion No. 1810, Vol. 1, of the Attorney General's opinions for the year 1930.)

"(2) Is the Commercial National Bank and Trust Company of New York, New York, continuing in the State of Ohio by virtue of the merger through the Bankers Trust Company?

"(3) Does the Bankers Trust Company have on deposit with the Treasurer of the State of Ohio, under the provisions of Section 710-150, the amount of $200,000 in United States Treasury Bonds as a result of the merger and, if so, is the Bankers Trust Company entitled to withdraw the excess over $100,000 without compliance with the provisions of Section 710-155, General Code of Ohio?

"A certified copy of the merger agreement is herewith enclosed, which you will please return to me after you have examined it."

A discussion of the general questions of law here presented is found, as you indicate, in Opinions of the Attorney General for 1930, p. 668, No. 1810, but it is significant to note that in that instance the writer did not

have for consideration a specific merger agreement consummated under the laws of a particular state. The syllabus of the 1930 opinion is as follows:

> "1. In instances of consolidation of two national banking associations, a state bank with a national banking association or two state banks, which possessed trust powers, before the Superintendent of Banks may authorize the withdrawal of funds deposited with the Treasurer of State under Section 710-150 of the General Code, he must be satisfied that in cases in which said banks have been acting in a fiduciary capacity, such as trustee, executor, administrator, guardian, receiver, etc., their duties as such have been properly terminated.
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> "2. Upon consolidation, a consolidated bank is possessed of the rights, privileges, powers and franchises of the several companies and may act as trustees of the trusts held by the constituent companies, except in those cases where authority to act in a fiduciary capacity must be granted by a court, and before any of the trusts may be transferred to the consolidated bank, the new corporation shall deposit with the Treasurer of State one hundred thousand dollars, as provided for in Section 710-150 of the General Code of Ohio."

It is quite apparent that the conclusions above stated were reached by my predecessor in office entirely on the theory that the consolidation of two banks results in the creation of a new entity which is separate and distinct from that of the several constitutent corporations parties thereto. Thus, at page 671 in the opinion it is said:

> "The effect of consolidation with respect to the extinction of the constituent corporations and the creation of a new corporation or the continued existence of one or both of the constituent corporations, depends upon the statute under which the consolidation is effected. The general rule is that a consolidation effects the dissolution of the original corporations and brings into existence a new corporation. Where the Legislature simply authorizes a consolidation without expressly declaring its effect, it must be deemed to have this general rule in view, and to intend that it shall apply. 14A Corpus Juris, p. 1067.
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> "Your attention is called to the fact that Section 710-88, supra, specifically refers to such consolidated company as a *new company*. There is no question, therefore, that, under such a statute, the consolidated company being considered a new company, before any of the trust powers of the constituent corporations, as set out in your communication, could be transferred to it, it would be necessary for the consolidated company

> to comply with Section 710-150 of the General Code of Ohio and deposit with the Treasurer of State one hundred thousand dollars, as provided for in said section. * * *"
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> (Emphasis added.)

In view of the conclusion above stated, based largely on a reference in Section 710-88, General Code, to "a new company," it is appropriate to examine these words in context. This section, as then in effect, read as follows:

> "In case of consolidation, when the agreement of consolidation is made and a duly certified copy thereof is filed in the office of the secretary of state, together with a certified copy of the approval of the superintendent of banks to such consolidation, the banks, parties thereto, shall be held to be one company possessed of the rights, privileges, powers and franchises of the several companies, but subject to all provisions of law relating to the different departments of its business. The directors and other officers named in the agreement of consolidation shall serve until the first annual election, the date for which shall be named in the agreement. On filing such agreement all and singular the property and rights of every kind of the several companies, including the exclusive right in and to the corporate name of each of the banks parties to such agreement shall thereby be transferred to and vested in such new company, and be as fully its property as they were of the companies parties to such agreement. The secretary of state shall not file or record any articles of incorporation of any company organized to do the business of a bank, a building and loan association, or a mortgage or investment company, within the county within which said consolidated bank is situated, if such name, or the distinguishing part thereof, is that of any bank party to such agreement, or so similar thereto as to be likely to mislead the public, unless the written consent of the consolidated bank, signed by the president and secretary, be filed with such articles."

Since there is no express provision in this language that a new corporate entity results from a consolidation to which the provisions of this section are applicable, the conclusion that such is the result must rest on implication. Moreover, such implication can hardly be deemed consistent with an express provision then found in the Ohio general corporation act relative to the consolidation of corporations. Section 8623-67, General Code, as then in effect, read in part as follows:

> "Any two or more corporations organized under this act or any previous corporation act of this state may consolidate

into a single corporation hereinafter called 'consolidated corporation,' which may be any one of such constituent corporations or a new corporation to be formed by such consolidation, as follows:

> "(a) The board of directors of each corporation shall approve an agreement which shall set forth:
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> "(1) The names of the constituent corporations and that they have agreed to consolidate on the terms and conditions therein stated;
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> "(2) That the constituent corporations are to become a single new corporation or that certain of the constituent corporations are to be merged into a specified constituent corporation; * * *"

This express provision that the continuation in existence of one of the constituent corporations in a consolidation shall depend upon the terms of the consolidation agreement would appear to apply to banks as well as to other corporations since the special provisions of Section 710-88, General Code, appear to be cumulative within the meaning of Section 8623-132, General Code. For this reason I am unable to perceive the logic of the conclusion in the 1930 opinion, supra, that a new entity must necessarily have resulted from a consolidation of banks by reason of the operation of the provisions of Section 710-88, General Code, in effect at the time that opinion was rendered.

An even more cogent reason why the conclusions reached in the 1930 opinion cannot be deemed controlling in the instant case is the fact that Section 710-88, General Code, as then in effect, plainly referred to a consolidation in which at least one of the constituent banks was an Ohio corporation.

As since amended this section is somewhat broader in scope as indicated by the following provision therein:

> "Whenever banks shall consolidate whether or not one or more shall have been organized and be existing under the laws of Ohio or of the United States of America and whether or not the resulting consolidation shall be a corporation organized and existing under the laws of this state or of the United States, when the agreement of consolidation is made, and if in case the resulting corporation exists under the laws of this state, a duly certified copy thereof is filed in the office of the secretary of state, together with a certified copy of the approval of the superintendent of banks to such consolidation, or in case

> the resulting corporation exists under the laws of the United States, the agreement of consolidation is approved by the comptroller of the currency of the United States of America, the banks, parties thereto, shall be held to be one company possessed of the rights, privileges, powers and franchises of the several companies, but subject to all provisions of law relating to the different departments of its business. If the resulting corporation exists under the laws of this state, the directors and other officers named in the agreement of consolidation shall serve until the first annual election, the date for which shall be named in the agreement. On filing such agreement all and singular the property and rights of every kind of the several companies, including the exclusive right in and to the corporate name of each of the banks parties to such agreement shall thereby be transferred to and vested in such new company, and be as fully its property as they were of the companies parties to such agreement. * * *"

The final sentence in the foregoing quotation is especially significant. It provides, in effect, for the automatic transfer of the assets of the constituent corporations to "such new company" by the "filing of such agreement." Now the only provision in the prior context in this section for filing any agreement is (1) the filing with the secretary of state in a case where the resulting corporation is to exist under the laws of Ohio and (2) the approval by the comptroller of the currency of a consolidation agreement filed with that officer in a case where the resulting corporation is to exist under the laws of the United States.

Accordingly, when these provisions of Section 710-88, General Code, are considered as a whole, I am strongly impelled to conclude that this section is intended to apply only to cases where an Ohio bank, or a national bank located in Ohio, is a party to a consolidation. Moreover, considerable support is lent to this conclusion by the strong implication in the final sentence quoted above from this section that the primary purpose of this statute is to insure that the resulting corporation, whether or not a new entity, shall succeed without question to all property, rights, privileges, etc., of the several constituent corporations; and not to provide an exception to the express provisions in the general corporation act relative to the effect of a consolidation in the extinguishment of the entities of the several constituent corporations or the continuance in existence of one of such entities.

In this situation I conclude that where an Ohio bank is a party to a consolidation in which the consolidation agreement provides that certain

other constituent banks are to be merged into such Ohio bank, the provisions of Section 710-88, General Code, cannot be interpreted as having the effect of constituting such resulting corporation a new entity contrary to the express provisions of Section 8623-67, General Code, the pertinent provisions of this section still being substantially as indicated in the quotation hereinbefore set out. From this it necessarily follows by analogy that no such effect can be ascribed to Section 710-88, General Code, with respect to the consolidation of a New York bank and a national bank as in the instant case.

In the particular case with which we are here concerned, the agreement of consolidation contains the following provisions:

> "In consideration of the premises, the parties hereto agree that The Commercial National Bank and Trust Company of New York is the corporation to be merged and Bankers Trust Company is the corporation which is to receive into itself the merging corporation and that the terms and conditions of the merger and the mode of carrying it into effect shall be as follows:
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> "1. The effect of the merger of The Commercial National Bank and Trust Company of New York into Bankers Trust Company shall be that provided in paragraph 4 of Section 136 of the Banking Law of the State of New York (enacted by Chapter 830 of the laws of 1951) and Section 214b of Title 12 of the United States Code (Section 3, Public Law 706, 81st Congress, approved August 17, 1950)."

Section 214b, Title 12, United States Code, is as follows:

> "The franchise of a national banking association as a national banking association shall automatically terminate when its conversion into or its merger or consolidation with a State bank under a State charter is consummated and the resulting State bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties the resulting bank is a State bank. Any reference to such national banking association in any contract, will, or document shall be considered a reference to the State bank if not inconsistent with the provisions of the contract, will, or document or applicable law."

This provision is simply a recognition of the right of the receiving or resulting corporation to succeed to all the rights, property, etc., of the merged national bank and in this respect is similar in effect to the provisions of Section 710-88, General Code, as hereinbefore indicated.

Paragraph 4 of Section 136 of the New York Banking Law presents somewhat more difficulty, the nature of which can be more readily perceived by examining this paragraph in context. The section reads in part as follows:

> "Any banking corporation organized under the laws of the United States and doing business in this state may become a bank or trust company of this state with all the powers and subject to all the obligations and duties of a bank or trust company organized under the provisions of this article, provided such bank has authority by virtue of any law of the United States, to dissolve its organization as a national bank. A national bank desiring to become such an incorporated bank or trust company of this state shall proceed in the following manner: 1. It shall take such action, in the manner prescribed or authorized by the laws of the United States, as shall make its dissolution as a national bank effective at a future date certain.
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> "2. A majority of its directors shall thereafter and before the time when its dissolution becomes effective, subscribe and acknowledge in duplicate upon the authority in writing of the owners of at least two-thirds of its capital stock, the organization certificate required by section ninety of this article, and attach thereto duplicate originals of the said written authority of stockholders, or copies thereof certified by an officer of the bank under its corporate seal; together with a copy of the resolution fixing the date at which its dissolution as a national bank shall become effective, similarly certified.
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> "3. It shall thereupon, and before the time when its dissolution becomes effective, submit such certificate, in duplicate, with the authority of stockholders and resolution attached thereto, to the superintendent at his office.
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> "4. If the superintendent shall endorse his approval on the organization certificate as provided in article two of this chapter, its corporate existence as a state bank or trust company shall thereupon begin. But such bank or trust company shall transact no business as a state bank or trust company other than that relating to its organization until it shall have complied with the conditions precedent to commencing business prescribed by paragraphs (b) and (c) of subdivision one and by subdivision two of section ninety-three of this article. * * *"

It is difficult to understand why reference to this statue should have been made in the agreement under scrutiny, since the statute appears to be applicable only to a case where a single bank is involved and where such bank has elected to be dissolved as a national bank and to continue

in business as a New York state bank. In such a case, quite obviously, a new corporate entity would result. In the instant case, however, we are concerned with *two* banks, one state and one national, and where the state bank is to receive into itself the merged national bank. In such case it seems quite clear that the following provisions of Sections 600 and 602 of the New York Banking Act are applicable:

Section 600:

"The following mergers are hereby authorized:

"* * * (4) One or more national banks with a bank or trust company located in the same banking district or in the same city, whether or not such city is located entirely within one banking district. * * *"

Section 602:

"Upon the merger of any corporation into another as provided in this article: (1) Its corporate existence shall be merged into that of the receiving corporation; and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to it under an unmerged existence, shall be deemed fully and finally, and without any right of reversion, transferred to and vested in the receiving corporation, without further act or deed, and such receiving corporation shall have and hold the same in its own right as fully as the same was possessed and held by the merged corporation from which it was, by operation of the provisions of this article, transferred. * * *"

From the foregoing provisions it is abundantly plain that in the instant case the national bank has ceased to exist as such but has been merged into the state bank, that such state bank has succeeded to all of the property rights of the merged bank; and that the identity of the state bank is continued in the same corporate entity previously existing.

In this situation it can only be supposed that the reference in the consolidation agreement to paragraph 4 of Section 136, New York Banking Law, if not included through inadvertence, was made for the purpose of emphasizing the intent of the parties to the agreement that the corporate existence of the national bank, under the law of the United States, should cease, and its corporate existence in the entity of the state bank under the laws of New York should begin, both at a date certain.

Whatever the reason be for this reference, however, I must conclude that it does not have the effect of constituting the resulting corporation in this case a new entity but rather under the provisions of Section 602, New York Banking Law, such resulting corporation is the corporate entity of the receiving corporation, The Bankers Trust Company, continued in existence.

In this respect, therefore, the factual situation differs from that under examination in the 1930 opinion, supra, and the conclusions therein reached cannot be deemed applicable in the case at hand. Rather, it must be concluded that since the Bankers Trust Company was licensed under the provisions of Section 710-151, General Code, to do a trust business in this state prior to the recent merger, and since the identical corporate entity of such licenses is continued in existence as the result of such merger, it follows that the status of such license is unaffected thereby and that no further action by way of applying for a new license is necessary.

As to your second question, it cannot be said, strictly speaking, that the Commercial National Bank and Trust Company is "continuing in Ohio" as a result of the merger or that such company has retired from doing business in the state within the meaning of Section 710-155, General Code. It can only be said that such company, having merged itself into the Bankers Trust Company, has thereby lost its separate corporate entity and that the Bankers Trust Compnay has succeeded by operation of law to all of the property rights and privilges of such merged company. Undoubtedly, the Bankers Trust Company will proceed ot execute the several trusts previously undertaken by the merged company as a trustee substituted for it by operation of law and in this very limited sense only can it be said that the Commercial National Bank and Trust Company is "continuing in Ohio." It is in this sense, I think, in which we must regard the resulting state bank as being "considered the same business and corporate entity as the national banking association," as provided in Section 214b, Title 12, United States Code, quoted, supra.

As to your third question, since the Bankers Trust Company has succeeded to all of the property, etc., of the merged bank, it clearly appears that such resulting state bank is the beneficial owner, by operation of law, of the $100,000 deposit heretofore made with the treasurer of state under the provisions of Section 710-150, General Code. This company, therefore, has an aggregate of such deposits with the treasurer of $200,000. As

to the withdrawal of the excess deposit over the amount required by statute, I cannot perceive that the provisions of Section 710-155, General Code, are in anywise applicable. This section is as follows:

> "Upon the retirement from this state of any foreign trust company, notice of such proposed retirement shall be published once each week for four consecutive weeks in a newspaper of general circulation in the city or village in which the principal place of business of such company is located within this state and proof of such publication shall be filed with the superintendent of banks. Such company shall within thirty days after the expiration of the period provided for in such notice, file its application in the court of common pleas of the county in which its principal place of business is located within the state, for authority to withdraw from the treasurer of state the securities or fund deposited with him under the provisions of section 150 (G. C. sec. 710-150) of this act; and said court, if satisfied that such company has fulfilled and met all of its obligations may so find and may authorize the withdrawal of such securities by such trust company; and upon receipt of a certified copy of such order, the superintendent of banks shall so certify to the treasurer of state and thereupon such treasurer of state shall deliver and surrender to such trust company the securities or funds heretofore deposited with him for the faithful performance of the trusts assumed by such trust company."

Certainly it cannot be said in this situation that the Bankers Trust Company has, in any sense, retired or contemplates "retirement from this state."

As to the constituent corporation, the Commercial National Bank and Trust Company, its trust business in Ohio is still being carried on by the resulting corporation, the Bankers Trust Company, so that it cannot be said that the Commercial National Bank and Trust Company has retired from the state within the meaning of Section 710-155, General Code. I conclude, therefore, that no proceedings under authority of this section are appropriate in the case here under consideration.

Any consideration of the right of the Bankers Trust Company to withdraw $100,000 of the present $200,000 deposit with the treasurer of state should begin with an examination of the legislative intent, purpose and policy in requiring such deposit. Such intent, purpose and policy is indicated by the provisions of Section 710-161, General Code of Ohio, which reads as follows:

> "The capital stock of such trust company, with the liabilities of the stockholders existing thereunder, and the fund deposited with the treasurer of state as provided by law shall be held as security for the faithful discharge of the duties undertaken by such trust company in respect to any trust, and no bond or other security, except as hereinafter provided, shall be required from any such trust company for or in respect to any trust, nor when appointed executor, administrator, guardian, trustee, receiver, assignee, or depositary; except that the court or officer making such appointment may, upon proper application, require any trust company which shall have been so appointed to give such security for the faithful performance of its duties as to the court or officer shall seem proper, and upon failure of such trust company to give security as required may remove such trust company and revoke such appointment."

The provisions of this section are sufficiently broad, in my opinion, to subject the original $100,000 deposit made by the Bankers Trust Company to use "as security for the faithful discharge of the duties undertaken by such trust company in respect to any trust," whether or not such trust be one with respect to which such company succeeded the merged Commercial National Bank and Trust Company as trustee, and whether a failure to discharge any trust duties be chargeable to an act or omission by the resulting corporation following the merger or by the constituent merged corporation prior to the merger. As to the latter instance, it is said in 19 Corpus Juris Secundum, 1392, Section 1630:

> "Generally a corporation formed by consolidation or merger is answerable for the debts and liabilities of the constituent corporations."

That this rule is followed in Ohio is indicated by the decision in Goodisson v. North American Securities Company, 40 Ohio App. 85, in which it was said:

> "The North American Securities Company absorbed all the assets of the Harvard Mortgage Company. It likewise assumed all its obligations. If there be any doubt on this latter point, we need but refer to the fact that in this very case the North American Securities Company seeks a judgment against the plaintiff on the basis of her subscription contracts with the Harvard Mortgage Company. It seeks the benefits to the Harvard Mortgage Company arising from said contracts, and it thereby likewise assumes the burdens."

The only remaining question which may be suggested is whether there is apparent from the statute (Section 710-150 et seq., General Code) any indication of a legislative intent or policy to require a larger deposit by a resulting corporation in a merger by reason of the very considerable increase in the amount of trust business handled in Ohio which we may assume to have occurred when such corporation succeeded to the business theretofore carried on by the merged company. I am unable to perceive anything in the language of this statute which is indicative of such intent or purpose. It is to be noted that no mention whatever is made of the amount of trust business which a licensee is permitted to carry on. The deposit is the same whether the amount of such business be ten thousand or ten million dollars annually, for example.

In this connection the reasoning in Chicago Title and Trust Company v. Zinser, 264 Ill., 31, is a matter of analogous interest as indicated by the following statements in the opinion therein (pp. 35, 36):

> "Etta Nelson, in naming the Real Estate Title and Trust Company as executor, and trustee, knew that its directors, officers and stockholders might change from time to time, and that the statute authorizes a change of name or place of business, enlargement or change of the object for which the corporation was formed, an increase or decrease of capital stock or change in the number of shares or par value, increase or decrease of the number of directors, and the consolidation of the corporation with any other corporation then existing or that might thereafter be organized. She therefore contemplated that these changes might occur and that the Real Estate Title and Trust Company might be consolidated with some other corporation such as the Chicago Title and Trust Company, and it would thereby cease to exist and become a component part of a new corporation. A consolidation took place and a new corporation was created from the original corporations, with an enlarged capital, stock and unimpaired franchises. The appellee was entiteld to execute the trust, and the chancellor did not err in overruling the demurrer."

By a similar line of reasoning, we may conclude that the General Assembly must have contemplated that the trust business of a licensee in Ohio might vary in amount between wide extremes, and that sudden increases in the amount of such business might well result from merger of two licensees each doing a large volume of such business. When with such possibilities in contemplation, the General Assembly prescribed a deposit in a fixed amount, we must suppose that it was not intended to

require of a particular licensee any deposit other than that amount, regardless of the amount of new business acquired or new trustee obligations assumed. I conclude, therefore, in the case which you have presented, that the Bankers Trust Company should be permitted to withdraw its excess deposit in the amount of $100,000 without following the procedure provided in Section 710-155, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General