

2559.

ACCOUNTS RECEIVABLE — NOT SHIPPING DOCUMENTS
TRANSFERRING OR SECURING TITLE UPON WHICH BANK
LOANS CAN BE PREDICATED — SECTION 710-122 (8) G. C.

SYLLABUS.

Accounts receivable are not shipping documents, warehouse receipts or other such documents transferring or securing title upon which bank loans can be predicated under Section 710-122 (8), General Code.

Columbus, Ohio, July 24, 1940.

Honorable Rodney P. Lien, Superintendent of Banks,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“The ‘A’ Brick Corporation having received an order for one or more carloads of building bricks from a construction company in a distant city makes shipment thereof on the 24th day of May, 1940, said bricks to be paid for on or before the 15th day of June, 1940.

The ‘A’ Brick Corporation needing funds to meet payrolls and for other commercial purposes, borrows a sum of money from the ‘X’ Bank and as evidence thereof executes a collateral form promissory note payable to said bank and as security for the sum borrowed assigns to the bank the accounts receivable representing the purchase price of the shipment of bricks above referred to. The amount so borrowed is in excess of the general ten per cent loan limitation under Section 710-122, General Code; however, since the margin of the collateral is sufficient, if the loan is secured otherwise in the manner provided in sub-paragraph (8) of said Section 710-122, General Code, the same is not excessive.

I would, therefore, appreciate your opinion as to whether or not the transaction herein described is such as may legally authorize the bank to loan more than ten per cent of its capital and surplus, plus ten per cent of its debentures, limited as to debentures as provided in said section.”

From your letter I conclude that: “A” company has borrowed up to the legal limit (10%) from “X” bank. “A” company desires to borrow

additional funds from "X" bank by signing a collateral note and as security for such note assign an account receivable to the bank.

Section 710-122, General Code, limits the amount that a firm may borrow in the following language:

"A bank having capital shall not lend to any one person, company, corporation, or firm, more than ten per cent of its capital and surplus plus debentures and/or capital notes * * * .

* * *

The foregoing restrictions shall not, however, apply to:

* * *

(8) Obligations of any person, copartnership, association or corporation, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when such property is fully covered by insurance, if it is customary to insure such staples, shall be subject under this section to a limitation of 15 per centum of such capital * * * ."

The security stated in your letter consists of an account receivable. In order to qualify under Section 710-122, paragraph (8), accounts receivable must be classed as "shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable non-perishable staples."

For the purpose of this opinion, it may be conceded that the bricks are non-perishable staples; this leaves the question as to whether accounts receivable are shipping documents, warehouse receipts or documents transferring or securing title. Obviously such accounts are not shipping documents or warehouse receipts, and I am of the opinion that they also fail to qualify as documents transferring or securing title.

"Document of Title to Goods" has been defined in Section 8456, paragraph (1), General Code, as follows:

"'Document of title to goods' includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive either by endorsement or by delivery, goods represented by such document."

The main element of such a document is the proof of possession or con-

trol of goods or the authorization to transfer or receive the goods. An account receivable fails to conform to this statutory definition. It is not a document which establishes possession or control of goods, neither does it authorize the holder to transfer or receive title to the goods. It merely indicates that the goods have been sold and payment is expected. It does not establish the matter of title to the goods upon which arrangements for financing the sale can be predicated. The security stated in Section 710-122(8), General Code, consists of that type of commercial paper which is symbolical of the property described in it. An account receivable is merely a record of a business transaction showing what is due. In 1 C. J. S., p. 573, it is defined as "the amount owing to a person in open account." (State v. Globe Democrat Publishing Company, 294 S. W. 1018.)

Therefore, I am of the opinion that the transaction described in your letter does not authorize the bank to loan more than 10% of its capital and surplus, plus debentures, to the "A" company.

Respectfully,

THOMAS J. HERBERT,
Attorney General.