The prosecuting attorney of the county, in which letters of administration are granted upon such estate, shall collect and pay it over to the treasurer of such county; to be applied exclusively to the support of the common schools of the county in which collected, in such manner as is prescribed by law."

Respectfully,
JOHN G. PRICE,
Attorney-General.

1818.

BANKS AND BANKING—FOREIGN TRUST COMPANY—ACCEPTED DEED OF TRUST TO REAL ESTATE EXECUTED PRIOR TO JULY 11, 1919, AND COMPLIED WITH LAW THEN IN FORCE—PROVISIONS OF NEW BANKING ACT NOT APPLICABLE.

A trust company, organized under the laws of another state and doing business therein, accepted a deed of trust to real estate duly executed and recorded prior to July 11, 1919, *and complied with the provisions of sections* 9778 *and* 9779 *G. C., then in force. All the bonds secured by said deed were issued prior to July* 11, 1919, *and the company is performing no function in the state except holding the legal title to said real estate. Held that it can not be required to comply with the provisions of section* 710-17c, *section* 710-150, *section* 710-151, *or section* 710-152 *G. C.*

COLUMBUS, OHIO, January 26, 1921.

HON. IRA R. PONTIUS, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—Your recent communication contains the following statement and query:

"SET OF FACTS:

Assuming that:

(1) Prior to July 11, 1919, a trust company, duly organized under the laws of the state of Massachusetts and doing business therein, accepted a conveyance, as trustee of certain real estate located in Ohio, for the purpose of securing the payment of principal and interest of bonds issued and to be issued by the conveyor of said property;

(2) Said trust deed was duly executed, recorded and all of the bonds authorized to be issued thereunder issued and certified by said trustee prior to July 11, 1919;

(3) Prior to July 11, 1919, the acceptance of said trust and the issuance of said bonds, said trustee fully complied with and qualified under the provisions of sections 9778 and 9779 of the General Code then in force;

(4) Said trustee has no office, place of business, officers or agent within the state of Ohio, its only activity in said state being confined to its acceptance of said trust and its certification of said bonds as aforesaid;

(5) The laws of the state of Massachusetts do not afford such comity as is made the basis of the exemption referred to in section 710-154, General Code.

QUERY:

Until such time as said trust company undertakes, in connection with said trust, some activity within the state of Ohio other than holding title

as trustee as aforesaid, what additional reports must be made or fees paid to the state of Ohio or any department thereof under the provisions of the new banking act effective July 11, 1919, or other statutes now in force within the state of Ohio, and, specifically, does said trust company come within the provisions of section 710-17c, section 710-150, section 710-151 and section 710-152, General Code, contained in the new banking act?"

The sections pertinent to a decision of this question are: 710-17c, 710-150, 710-151, 710-152 and 710-154, and the provisions necessary to be considered are as follows:

"Section 710-17c. Each foreign trust company desiring and intending to do business in this state shall annually pay to the superintendent of banks a fee of one hundred dollars for issuance to it of a certificate authorizing it to transact business in this state, and such fee shall be paid before such certificate is issued."

"Section 710-150. No trust company, or corporation, either foreign or domestic, doing a trust business shall accept trusts which may be vested in, transferred or committed to it by a person, firm, association, corporation, court or other authority, of property within this state, until its paid in capital is at least one hundred thousand dollars, etc."

"Section 710-151. Every foreign trust company shall, upon being admitted to do business within this state as otherwise provided by law, file a certified copy of its certificate of admission with the superintendent of banks, etc."

"Section 710-152. Every foreign trust company doing a trust business in this state, shall annually within thirty days after complying with all the provisions of law in relation to foreign corporations transacting business within this state, file with the superintendent of banks a certificate of the tax commission of Ohio as to such compliance together with a copy of the last published statement of said corporation, and if such trust company is not in default as to any trust matter or estate within this state, the superintendent of banks shall thereupon, and upon payment of a fee of one hundred dollars therefor, license said corporation to transact business within this state for a further period of one year."

"Section 710-154. No such trust company, foreign or domestic, authorized to accept and execute trusts, either directly or indirectly through any officer, agent or employe thereof, shall certify to any bond, note or other obligation to evidence debt, secured by any trust deed or mortgage upon or accept any trust concerning property located wholly or in part in this state, without complying with the provisions of sections 150, 151 and 152 of this act. But nothing herein contained shall prevent a foreign corporation from qualifying as executor or administrator of property in this state, after appointment as executor or administrator by the courts of any other state as provided by law, when the decedent was a resident of such state at the time of his death, or from acquiring, holding or transferring title to lands or other property within this state as trustee to secure any bond, note or other obligation aforesaid, or from certifying thereto, but provided always, that by the laws of such other state a trust

company organized and doing business under the laws of this state shall have equal privileges as to any similar estate, deed or trust of property in such other state."

The qualifying steps prescribed in these statutes are to be taken by companies desiring and intending to do business in this state, or accepting trusts, or being admitted to do business, or doing a trust business, or certifying to any bond, etc., or accepting any trust.

Is the trust company, to which you refer, doing any of these things? The acceptance of the trust, the admission to do business and the certification of obligations by it preceded the going into effect of the sections quoted and were authorized by compliance with former sections applicable. Your query is as to a case where the trust company simply holds the legal title and is not performing any other trust function. The opinion will therefore be limited to a consideration of this state of facts.

In Opinion No. 527, rendered by this department on July 28, 1919, to Hon. Harvey C. Smith, secretary of state, it was held that a foreign trust company, not comprehended within the exception appearing in section 710-154, must secure a license for the privilege of doing business and pay a fee of $100.00 not later than one year after the passage of the sections above quoted. What was said there was manifestly directed to the case of a trust company "doing business."

In Vol. II, Opinions of the Attorney-General for 1917, p. 1299, reference was made to certain foreign corporations, including trust companies, and this language used:

"As to such companies it seems that any business done, or transaction within the state through any agencies is 'doing business' in such state (citing authorities)."

What was there said, however, was not necessary to a decision of the question under consideration. But it must now be determined whether the simple holding of legal title to property in the state by a foreign trust company under one trust conveyance constitutes the doing or transaction of business within the statutory provisions above quoted.

The terms "doing business" or "transacting business" as used in the statutes of various states, relating to the admission of foreign corporations, have a well understood meaning. They comprehend not only the accomplishment of corporate purposes rather than the exercise of corporate powers, that is transactions customary in the conduct of such business, but also general activity rather than isolated acts. A definition has been well stated by the supreme court of Utah, in the case of *Booth* vs. *Weigand,* 10 L. R. A. n. s. 693:

"The words 'doing business', as used in these provisions, refer to a general transaction of business, and not to an isolated transaction, or to single, or wholly collateral, acts. The statute obviously relates to some regular or customary business."

Other authorities sustaining the correctness of this statement are:

12 R. L. C., 69.
19 Cyc., 1268.
13 Am. & Eng. Encyc. of Law, (2nd Ed.) 869.
3 Words and Phrases, 2155.

International Textbook Co. vs. Pigg, 217 U. S. 91.
Cooper Mfg. Co. vs. Ferguson, 113 U. S. 727.
State vs. Robb-Lawrence Co. (N. D.) 106 N. W. 406.
Finch vs. Zenith Furnace Co. (Ill.) 92 N. E. 521.
Home Lumber Co. vs. Hopkins (Kas.) 190 Pac. 601.
Penn Colleries Co. vs. McKeever (N. Y.) 2 L. R. A. n. s 127.

The holding of a legal title under a trust conveyance is of course a usual and proper function of a trust company, but the statement of facts here limits our consideration to one isolated transaction. If we are to adopt, in construing these sections from the banking act, the definition given to the term "doing business" by courts which have considered statutes relating to the admission of foreign corporations, we must conclude that the instant case is not within these provisions. It is to be presumed that the legislature when using the terms considered here must have known of the broad general definition applied to them by the courts and that they had thereby acquired a popular meaning and signification. It is a rule of construction that where a term has acquired a general and well understood meaning, the latter is to be taken in the interpretation of the statute. That the legislature understood that "doing business" was not applicable to the case of a single transaction may be fairly argued from its use of more definite and limited expressions in certain sections. Thus, in section 710-150 there is the provision that no trust company "doing a trust business shall accept trusts" until it has met certain requirements. And in section 710-154 appears a prohibition against certifying to any obligation to evidence debt without compliance with the provisions of certain sections. It is a fair inference therefore that if the term "doing business" had been regarded as applying to any possible activity in which a trust company might engage, there would have been no designation of particular transactions. Under section 710-154 a company is forbidden to certify to *any* bond, etc. Something more than the prohibition against doing business was evidently regarded as necessary because such prohibition did not apply to an isolated transaction.

If the trust company in question here were preparing to certify to a bond issue, a different question would be presented, but the certification has been made. There was compliance with the law in force when the trust was created. The company's activity is limited to holding the title.

The latter part of section 710-154 contains an exception which provides that a trust company, organized under reciprocal laws of other states, shall not be prevented by anything in our banking act from *holding* title to lands or other property in this state as trustee, etc. There is some force in the argument that unless the legislature considered "holding" to be within the inhibitions of the act, it would not have put it into this exception. But a trust company might be holding the title to a dozen different pieces of property under as many conveyances, which would constitute doing business. In this way the appearance of this term in the exception may be explained.

Does the fact that the company holds the title for a considerable period of time amount to a continuity of transactions on the ground that it is exercising its function during each day of such period?

In the opinion of the Attorney-General, referred to, the holding was that a foreign trust company, as the law then stood, was not required to comply with the general provisions found in sections 178 to 183 of the General Code, relating to the admission of foreign corporations. This was because of the express provisions of section 736a regulating the granting of authority to foreign trust companies to do business in Ohio. There was in that opinion a suggestion that evidence of continuity of action on their part was not necessary to bring them within the purview of statutes such as we have here. An examination of the authorities cited by

the Attorney-General as sustaining this suggestion will disclose that they may be distinguished from the case in hand. For instance, three of them are Alabama cases and the statute of that state prohibits the transaction of "any business" without the performance of certain conditions. The other cases are still farther removed on their facts.

There are a number of decisions by the supreme court of Alabama which apparently sustain the position that continuity is not required, but they are based upon the peculiar language of the Alabama statute. The supreme court of the United States in *Chattanooga National Bldg. & Loan Assn.* vs. *Denson,* 189 U. S. 408, held that the making of a loan by an association located in Tennessee, secured by shares of its own stock and by mortgage on real estate in Alabama, was invalid because an agent had not been designated in the latter state as required by its constitution and statutes. The court said:

> "The prohibition is directed to the doing of *any* business in this state in the exercise of corporate functions; and there can be no doubt that petitioner considered that it was exercising such functions in the state."

In *Potter* vs. *Bank of Ithaca,* 5 Hill, 490, it was held that the loaning of money by a foreign banking corporation was not invalid under the foreign corporation laws of New York, because it was an isolated transaction and the corporation kept no office for banking purposes in the state.

The same conclusion was reached in *Suydam* vs. *Morris Canal & Banking Co.,* 6 Hill, 217. Both these cases were cited with approval by the supreme court in *Cooper Mfg. Co.* vs. *Ferguson,* supra.

Thus it will be seen that that court's decision in Building & Loan Association case, supra, was controlled by the peculiar provisions of the Alabama statute and their interpretation by the supreme court of that state.

The following authorities throw some light on the question involved:

In *Neil* vs. *New South Building & Loan Assn.,* 46 S. E. 455, the supreme court of Tennessee held that statutory provisions requiring foreign corporations to register their charters as a condition of doing business in the state, had no application to a foreign building and loan association having no agent or local board therein, which made a loan to a resident directly from and payable at its home office.

The same conclusion was reached by the court of civil appeals of Texas in *Brown* vs. *Guarantee Savings, Loan & Investment Co.,* 102 S. W. 138, by the supreme court of New Mexico in *Goode* vs. *Col. Inv. and Loan Co.,* 117 Pac. 637, and by the supreme court of Colorado in *Bell* vs. *Gonzales,* 83 Pac., 639.

It appears by the great weight of authority that the making of a single loan by a foreign corporation, whether a bank or a building and loan association, secured by a mortgage, is not the doing of business in the state where the property is located. So far as the question under consideration is involved, I fail to see any distinction in principle between such cases and the one we have here. The relation of trustee and cestui que trust continues from day to day, so does that of lender and borrower and interest continues to accrue. Both the trustee and the lender may be obliged to take steps to preserve or sequester the property. Both may be compelled to resort to the courts for the enforcement of some right. The trust company here having complied with the laws at the time it accepted its trust and holding no other in the state and doing nothing except serving as the repository of the legal title, it is not in my opinion within the provisions of section 710-17c,

or 710-150, or 710-151, or 710-152, or 710-154. What steps would bring it within such provisions are not considered in this opinion.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1819.

INHERITANCE TAX LAW—WHEN BEQUESTS TO CEMETERIES TAXABLE—WHEN NOT TAXABLE.

1. *A bequest to a township or municipal corporation for the purpose of embellishing or maintaining a public cemetery is exempt from the inheritance tax.*

2. *A bequest to a public corporation or private cemetery association for the purpose of maintaining the testator's burial lot is allowable as a deduction from the gross estate by way of expenses of administration, under the express authority of section* 10832 *G. C., at least if the amount is not unreasonable, having regard to all the circumstances.*

3. *The testator directed that of his estate the sum of* $12,500, *or more or less if necessary, be expended for the purchase of a burial lot and the erection of a suitable vault. The executor was allowed as expenses the sum of* $16,150 *for such purposes: HELD:*

That without a showing of other facts, such expenditure may be deducted from the gross estate in determining the value of the taxable successions therein, and is not itself a taxable bequest.

4. *A bequest to a private cemetery association for the general benefit of the cemetery conducted by it is taxable under the inheritance tax law.*

COLUMBUS, OHIO, January 26, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—By letter under date of December 20, 1920, the commission requested the opinion of this department as follows:

> "In connection with the estates of persons who have died testate bequests are frequently met with providing for the payment of sums of money to cemetery association. In some cases the cemetery in question is owned by a municipality or township and in some it is under the control or management of trustees who are elected by the votes of persons who have purchased and owned burial lots therein. In some cases again the will specifies the particular lot in which the decedent or some of his relatives are buried, while in others the terms are more general, so that the bequest can be used for any purpose connected with the cemetery.
>
> Will you advise the commission as to what general rules are to be observed in determining whether or not such bequests are subject to or free from inheritance tax?"

This request was supplemented on January 6 by a statement of facts upon which the commission requests a specific opinion, as follows:

> "K died leaving a will of which the following is one of the items: