You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Fidelity and Deposit Company of Maryland appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workemn's compensation have been complied with.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney-General.

1064.

FOREIGN TRUST COMPANY—MUST COMPLY WITH SECTION 710-154 G. C. BEFORE ENGAGING IN ACTIVITIES THEREIN NAMED.

SYLLABUS—

A foreign trust company must in order to procure the license to do business in Ohio, provided for in Sections 710-17 *and* 710-150 *to* 710-154 *General Code, comply with the provisions of Sections* 178, *et seq., and* 183, *et seq., even though it may have been admitted to do business in Ohio prior to the amendment of said Sections* 710-17 *and* 710-150 *to* 710-154 *in* 108 *O. L.*, 80.

(*Opinion of July* 28,1919, *Vol.* 1, *p.* 895, *Opinions of the Attorney-General,* 1919, *modified.*)

COLUMBUS, OHIO, December 31, 1923.

HON. H. E. SCOTT, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—You have asked the opinion of this office upon a matter which, as disclosed by correspondence and through personal conference, may be stated as follows:

A certain corporation organized under the laws of Michigan for the purpose of doing a trust business, was admitted to do business in Ohio prior to the taking effect of the revision of the banking laws by an act passed April 4, 1919, and found in 108 Ohio Laws, Part 1, Page 80, designated House Bill 200. The past transactions of the corporation concerning property in Ohio consist in its having become trustee under some vessel mortgages, and possibly one real estate mortgage; and, according to the statement of its counsel, it does not "plan to increase its field in Ohio." The corporation takes the position that it is not required to comply with Sections 178 General Code, et seq., and 183 General Code, et seq., in order to procure an annual renewal of a license permitting it to carry on in this state activities of the limited character above noted; and in support of its position, it refers to an opinion of this office (No. 527), dated July 28, 1919, Opinions of the Attorney General, 1919, Vol. 1, p. 895, and lays stress on the third conclusion therein. Your attitude is that compliance with the two groups of statutes is necessary; that the earlier opinion of this office was not primarily concerned with the administration of the banking laws, and that (quoting from your letter):

"We believe this opinion was correct only for the current year in which the fee was paid, and that the foreign trust company had a vested right under such fee; but we do believe further that this right expired at the end of the year for which the annual fee was paid and that it is not a perpetual or perennial right."

The question is, then, whether the corporation is exempt from compliance with the statutes specified.

The pertinent provisions of law are found in Sections 710-17 G. C. and Sections 710-150 to 710-154 G. C., all appearing in the above-mentioned revision of the banking laws. These statutes, so far as now material, are quoted in the previous opinion of this office, and need not be here quoted. Sections 178 G. C., et seq., and 183 G. C., et seq., are also quite fully described in that opinion.

The previous opinion held, among other things, that the effect of sections 710-150 to 710-154 G. C. was to require compliance by foreign trust companies with sections 178 et seq., and 183 et seq., as a prerequisite to their doing business in Ohio—a requirement which had been held not to exist prior to the enactment of sections 710-150 to 710-154 G. C., by said act of April 4, 1919; but further held that such requiremnt of compliance was not applicable to trust companies which had been admitted to do business in Ohio prior to the taking effect of the act of April 4, 1919. The reasoning of my predecessor as leading to the latter conclusion was this:

"Section 710-151 is applicable, however, only on the application of a foreign trust company for admission to do business within the state. Certain of such companies have already complied with the provisions of old sections 736c, 9778 and 9779 and have received from the superintendent of banks certificates authorizing them to carry on business in the state for one year. In my judgment such companies need not comply with the provisions of section 710-151 or with 178 and 183, because they have already paid a fee of $50.00, and here complied with the laws in force at the time of their applications for admission and received the certificate authorizing them to transact business in Ohio for a year. They must, however, when their present certificates expire, pay a fee of $100.00 for a renewal. It is true that section 710-154 provides that no trust company shall perform certain functions without complying with section 710-151, but nothing is contemplated under the latter section unless it is necessary for the company to be admitted to do business."

This reasoning and the conclusion based thereon are believed, after careful consideration, to proceed from too narrow a view of the policy embodied in Section 710-17 (amending earlier section 736-c) and Sections 710-150 to 710-154 (amending earlier sections 9778 to 9780) and from a failure to consider fully the practical effect of the view taken. Clearly, the purpose of the amendatory legislation, especially sections 710-151 and 710-152, as construed in the previous opinion, was to impose additional conditions upon foreign trust companies; and the General Assembly could have had no reason, so far as can be perceived, for creating a permanent distinction as to the extent of those conditions between foreign trust companies which had theretofore been admitted to Ohio, and those which had not. Moreover, the language of the opening sentence of Section 710-154 is plain in its provision that foreign trust companies shall not engage in the activities therein named without complying with Section 710-151; and while the earlier opinion disposes of this situation with the statement that the latter section contemplates nothing unless the foreign trust company must be admitted to do business, the fact remains that section 710-151 is new legislation containing no express exceptions and should be construed as having a prospective, rather than a retrospective, operation, especially as otherwise there will result, under the statutes now

being discussed, a purposeless distinction between foreign trust companies whose privileges at most, under those statutes, are limited to annual renewals. The activities of the trust company with which your inquiry is immediately concerned, come clearly within the terms of the first sentence of Section 710-154. Accordingly, for the reasons above given, this office is constrained to agree with you that the corporation in question must, if it desires to continue those activities from year to year, comply with sections 178 et seq., and 183, et seq., as a condition to obtaining the license mentioned in sections 710-17, 710-151 and 710-152; and that the only exemption from such requirement was for the annual period covered by the license outstanding when the act of April 4, 1919, went into effect.

It is not believed that the trust company in question can claim exemption under the comity provisions of the last sentence of section 710-154. A careful search of the statutes of Michigan has failed to reveal any provision for the admission of foreign trust companies for any purpose. On the other hand, there are provisions for the organization and conduct of domestic trust companies (Compiled Laws of Michigan, 1915, Chapter 153). Hence comity as interpreted in the case of New York Mortgage Company v. Secretary of State, 150 Michigan, 197; 114 N. W., 82, could hardly be relied upon by an Ohio trust company as assuring to it any definite privileges in Michigan. Reference has been made to the laws of Michigan because insofar as the last sentence of Section 710-154 relates to a foreign corporation's

> "acquiring, holding or transferring title to lands or other property within this state as trustee to secure any bond, note or other obligation, * * * or * * * certifying thereto,"

the exemption authorized on grounds of comity would seem to be determinable by reference to the laws of the domiciliary state of the foreign corporation. The view just expressed differs from that stated in the first conclusion of the previous opinion of this office already referred to. At best, the phrasing of the last sentence of Section 710-154 is involved and confusing, and should be corrected.

Respectfully,
C. C. CRABBE,
Attorney-General.