

Chapter 708

Regulation of Bank and Trust Company Operations Generally

Chapter 708

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708.030

ATTY. GEN. OPINIONS: The land and buildings of municipal water systems and electric utility companies and also their poles and pole lines, dams, reservoirs, rights of way, water rights, pipe lines and distributing lines and transformers and meters, if permanently attached to the premises, as real estate, 1944-46, p 305; investment of trust funds administered by a trust company or the trust department of a commercial bank as governed by the prudent man rule in ORS 128.020, 1950-52, p 414.

708.035

ATTY. GEN. OPINIONS: Authority to form a wholly owned subsidiary to hold title to bank premises, 1960-62, p 117.

708.210

NOTES OF DECISIONS

See also cases under ORS 708.220.

1. Constitutionality

This statute is a reasonable exercise of the police power and the restriction which it imposes upon the charter of a bank conferring unlimited borrowing and pledging powers upon the latter does not affect the validity of the statute. *Schramm v. Bank of Calif., Nat. Assn.*, (1933) 143 Or 546, 20 P2d 1093, 23 P2d 327.

This statute does not impose a personal liability upon the stockholders nor deprive the corporation of a valuable vested property right. *Id.*

2. Applicability and construction

This statute is applicable to a national bank. *Schramm v. Bank of Calif., Nat. Assn.*, (1933) 143 Or 546, 20 P2d 1093, 23 P2d 327.

The Act, of which this statute is a part, is penal in character and restricts common-law rights and therefore should be strictly construed. *Id.*

Borrowings of a bank within this statute include loans represented by promissory notes, and payment to it of overdrafts upon its account with another bank, but do not include a transaction whereby another bank is guaranteed to be protected against loss in the drawing of a draft by the latter for a customer of the former. *Id.*

3. Purpose

The general purpose of the Act, of which this statute is a part, is to preserve the assets of the bank free from all liens except the one granted to the depositors, to which general purpose there are only the specific exceptions

created by this statute and OC 22-804, 22-805 and 22-2001 [ORS 708.225 and 711.515]. *Schramm v. Bank of Calif., Nat. Assn.*, (1933) 143 Or 546, 20 P2d 1093, 23 P2d 327.

This statute is an exercise of the police power of the state intended to promote the public welfare and to protect the depositors against imposition. *Id.*

ATTY. GEN. OPINIONS: This section as applicable to national banks, 1944-46, p 234.

708.215

NOTES OF DECISIONS

See cases under ORS 708.210 and 708.220.

708.220

NOTES OF DECISIONS

See also cases under ORS 708.210.

A pledge to secure a loan in excess of the amount which the bank is entitled to borrow as provided by this statute is valid and enforceable. *Schramm v. Bank of Calif., Nat. Assn.*, (1933) 143 Or 546, 20 P2d 1093, 23 P2d 327.

A lender to a bank is entitled to payment of its loans even though they exceed the amount which the bank is entitled to borrow under this statute. *Id.*

The provision as to the total amount of security which a borrower may pledge under this statute without the bank superintendent's approval is mandatory and affects the pledge as well as rendering criminal the act of the official who made it, but the pledgee is not required to surrender all of the collateral which it possesses but only the excess of the statutory limitation. *Id.*

ATTY. GEN. OPINIONS: Basis upon which the limitation of collateral pledged by a bank or trust company is to be computed, 1930-32, p 531; pledging assets in excess of limitation, as security for a loan from the Reconstruction Finance Corporation, 1934-36, p 393.

LAW REVIEW CITATIONS: 12 OLR 308.

708.225

ATTY. GEN. OPINIONS: Right of bank legally to pledge collateral in lieu of surety bond given to Superintendent of Banks to secure deposits in various banks, representing money belonging to depositors of insolvent banks in liquidation by State Banking Department, 1926-28, p 439.

708.235

NOTES OF DECISIONS

This statute is not applicable to a continuing bond executed prior to its enactment and the payment of an annual premium does not have the effect of renewing a bond or re-executing it where the same has not expired, no notice having been served by the surety. *Schiska v. Schramm*, (1935) 151 Or 647, 51 P2d 668.

708.255

ATTY. GEN. OPINIONS: Power of state banks to borrow money, 1958-60, p 116; application to mutual savings banks, 1964-66, p 361.

708.260

ATTY. GEN. OPINIONS: Application to mutual savings banks, 1964-66, p 361.

708.265

ATTY. GEN. OPINIONS: Reflecting capital borrowings in accounts, 1958-60, p 116; authority of state-chartered mutual savings bank to issue capital debentures, 1964-66, p 361.

708.270

ATTY. GEN. OPINIONS: Authority of state-chartered mutual savings bank to issue capital debentures, 1964-66, p 361.

708.275

ATTY. GEN. OPINIONS: Authority of state-chartered mutual savings bank to issue capital debentures, 1964-66, p 361.

708.305**NOTES OF DECISIONS**

Equity will not assume jurisdiction of an action to compel the Superintendent of Banks to return a note given in a transaction, the effect of which was to enable a bank to make an excessive loan, in violation of statute. *Astoria Nat. Bank v. State Bank*, (1924) 109 Or 699, 222 P 588.

ATTY. GEN. OPINIONS: Investment of trust funds administered by a trust company or the trust department of a commercial bank as governed by the prudent man rule in ORS 128.020, 1950-52, p 414.

708.310

ATTY. GEN. OPINIONS: Meaning of "obligations" as used in this section, 1940-42, p 372.

708.335

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708.350

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708.360

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708.365

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708.380

ATTY. GEN. OPINIONS: "Days of grace" as allowable in computing due date of negotiable instrument payable in this state wherever same may be drawn, 1924-26, p 385.

708.395**NOTES OF DECISIONS**

An attempted payment for bank stock in realty, not being within the exceptions of the statute, was unauthorized and amounted to no payment at all, except to the extent that the proceeds of the attempted payment went to swell the bank's assets. *Sargent v. Am. Bank & Trust Co.*, (1916) 80 Or 16, 154 P 759, 156 P 431.

ATTY. GEN. OPINIONS: Power of state-chartered bank to invest in its bank building in excess of 50 percent of its paid-up capital and surplus, 1950-52, p 160; restrictions on bank investments, 1958-60, p 116.

708.400

ATTY. GEN. OPINIONS: Authority of state chartered bank that is a member of the Federal Reserve System to invest more than 50 percent of its paid up capital and surplus in its bank building, 1950-52, p 160; restrictions on bank investments, 1958-60, p 116; authority to form a wholly owned subsidiary to hold title to bank premises, 1960-62, p 117.

708.410

ATTY. GEN. OPINIONS: Authority to form a wholly owned subsidiary to hold title to bank premises, 1960-62, p 117.

708.415

ATTY. GEN. OPINIONS: Authority to form a wholly owned subsidiary to hold title to bank premises, 1960-62, p 117.

708.420

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708.425

ATTY. GEN. OPINIONS: Investment of trust funds administered by a trust company or the trust department of a commercial bank as governed by the prudent man rule in ORS 128.020, 1950-52, p 414.

708.430

ATTY. GEN. OPINIONS: Merger of corporation and power of merging corporation, 1928-30, p 491; restrictions on bank investments, 1958-60, p 116; authority to form a wholly owned subsidiary to hold title to bank premises, 1960-62, p 117.

708.435**NOTES OF DECISIONS**

Under a former similar statute, an attempted surrender

of bank stock by a subscriber who had given worthless assets of another bank in exchange therefor was void, and did not vest the bank with ownership of the stock surrendered or give it a right to reissue the same. *Sargent v. Am. Bank & Trust Co.*, (1916) 80 Or 16, 154 P 759, 156 P 431.

Under a former similar statute, the surrender by bank stockholders of their stock was a valid transfer of their stock, where the bank did not permanently retire such stock upon its surrender, but subsequently reissued it and sold it to other persons. *Sargent v. Waterbury*, (1917) 83 Or 159, 161 P 443, 163 P 416.

Under a former similar statute, since the provision was copied from the federal bankruptcy Act, decisions of the federal court construing the latter Act, to the effect that only the sovereign can take advantage of a violation of the provisions, were also adopted. Consequently, a state bank which received its own stock as collateral for a pre-existing debt could enforce its lien as against subsequent lienholders, though it delayed disposing of the collateral more than six months. *Columbia Rock Co. v. Hibernia Sav. Bank*, (1917) 86 Or 536, 169 P 88.

708.440

ATTY. GEN. OPINIONS: Application to loan by national bank, 1964-66, p 473.

708.480

ATTY. GEN. OPINIONS: Applicability of usury laws to national bank's BankAmericard program, 1966-68, p 160.

708.505

ATTY. GEN. OPINIONS: Right of parent to set off a given debt from him to bank of deposit of his minor child, 1928-30, p 287.

708.515

NOTES OF DECISIONS

A joint bank account, deposits in which are payable to either of the parties thereto or the survivor in case of death of either in accordance with an agreement with the bank, is contractual. *In re Edwards' Estate*, (1932) 140 Or 431, 14 P2d 274.

This statute is for the protection of the bank and does not protect one who makes withdrawals contrary to a mutual agreement between joint depositors. *Lay v. Proctor*, (1934) 147 Or 545, 34 P2d 331.

An estate by entirety in a bank account cannot be created. *Holman v. Mays*, (1936) 154 Or 241, 59 P2d 392.

The deceased's interest in a joint deposit is taxable under the state inheritance tax laws. *Id.*

A withdrawal by one codepositor of a joint bank account without the consent of the other does not effect a severance of the joint tenancy, but results only in a change in the form of the deposit while its joint character and the rights therein remain unaltered. *State Land Bd. v. Gralewski Estate*, (1945) 176 Or 448, 159 P2d 211.

FURTHER CITATIONS: *Beach v. Holland*, (1943) 172 Or 396, 142 P2d 990, 149 ALR 866.

ATTY. GEN. OPINIONS: When joint bank account taxable for inheritance, 1934-36, p 653.

708.525

NOTES OF DECISIONS

This section is not restricted to attachment and garnishment proceedings but is applicable in all cases when an adverse claim to a deposit is made. *Phil Grossmayer Co. v. Campbell*, (1958) 214 Or 265, 328 P2d 320.

In the absence of fraud, collusion or bad faith, where the garnishee bank did not know that the bank account, although in the name of a dissolved corporation, was actually that of the defendant, and plaintiff failed to procure a restraining order or to execute a bond, the bank was not liable for honoring a check drawn by defendant on this account after notice of garnishment. *Id.*

708.530

NOTES OF DECISIONS

The president of a bank cannot withdraw the money of a depositor without his authority, and the bank is liable for his wrongful act in doing so. *De War v. First Nat. Bank of Roseburg*, (1918) 88 Or 541, 171 P 1106.

Where a bank president is authorized by a depositor to withdraw and invest the latter's money, an action may not be maintained against the bank for the deposit. *Id.*

708.555

ATTY. GEN. OPINIONS: Right of payee to set off dishonored certified check against debt of payee to certifying bank, 1928-30, p 284.

LAW REVIEW CITATIONS: 8 OLR 272.

708.605

ATTY. GEN. OPINIONS: Duty and authority of Superintendent of Banks in connection with sale of real property by state bank operating under restriction, 1934-36, p 587.