Chapter 708

Regulation of Bank and Trust Company Operations Generally

Chapter 708


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.

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.

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.

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

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

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.

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

ATTY. GEN. OPINIONS: Stocks and bonds as "other such documents," 1954-56, p 86.

ATTY. GEN. OPINIONS: Default as applying only to particular obligations in which it is proposed to invest funds of a bank or trust company, 1936-38, p 196; when exchange of municipal bonds does not constitute a default of the part of the municipality, 1936-38, p 356; limitation on purchase of peoples' utility district bonds by state banks, 1942-44, p 155.

ATTY. GEN. OPINIONS: Superintendent's supervisory powers as incorporated into Industrial Loan Act, 1956-58, p 39.

ATTY. GEN. OPINIONS: Capital and surplus limitations on bank loans secured by a first lien on real estate, 1942-44, p 475; 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.

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.


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.

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

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

ATTY. GEN. OPINIONS: Failure to sell real estate within time prescribed by ORS 708.410, 1958-60, p 116.

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.

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.

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 surren-
dered or give it a right to reissue the same. Sargent v. Am.
Bank & Trust Co., (1918) 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.

ATTY. GEN. OPINIONS: Application to loan by national

ATTY. GEN. OPINIONS: Applicability of usury laws to

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.

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 creat-
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 Es-
state, (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.

NOTES OF DECISIONS:
This section is not restricted to attachment and garnish-
ment proceedings but is applicable in all cases when an
adverse claim to a deposit is made. Phil Grossmayer Co.
In the absence of fraud, collusion or bad faith, where the
garnishee bank did not know that the bank account, al-
though 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.

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.

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

LAW REVIEW CITATIONS: 8 OLR 272.

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