

stitution in the hands of the Secretary of Banking after payment of administration expenses and certain other types of preferred claims. The Federal Deposit Insurance Corporation will, of course, be entitled to the same preference over general creditors of the State bank as is accorded all depositors by State law.

In summary, we advise as follows:

### I

The laws of Pennsylvania permit banks, bank and trust companies, and savings banks to purchase class A stock of Federal Deposit Insurance Corporation and to assume the obligations incident to the ownership thereof as now provided by law.

### II

Pennsylvania law does not permit that Corporation to act as receiver of such institutions.

### III

In the event of the failure of a Pennsylvania institution, which is a member of the Corporation, enjoyment by the Corporation of the right to receive dividends would be dependent upon its becoming assignee of depositors or being subrogated to their rights by paying them the amount of their claims. The Corporation would be entitled to receive the dividends of depositors when it had paid all or part of their deposits, to the extent of such payment, (a) by virtue of the doctrine of subrogation, (b) by receiving written assignments from such depositors, and in either case, by proving their claims in the manner provided by the Banking Code.

Very truly yours,

DEPARTMENT OF JUSTICE,

HAROLD D. SAYLOR,

*Deputy Attorney General.*

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### OPINION NO. 149

*Banks and banking—Trust funds—Bonds of The Delaware River Joint Commission as legal investments for trust funds in Pennsylvania.*

Under the provisions of the Act of June 12, 1931, P. L. 575, authority is given to fiduciaries in the Commonwealth of Pennsylvania to invest funds in the bonds of The Delaware River Joint Commission which are legal investments for trust funds.

Department of Justice,

Harrisburg, Pa., October 1, 1934.

Honorable William D. Gordon, Secretary of Banking, Harrisburg, Pennsylvania.

Sir: You have asked to be advised whether bonds of The Delaware River Joint Commission are legal investments for trust funds in this Commonwealth.

The Delaware River Joint Commission is the public corporate instrumentality of the Commonwealth of Pennsylvania and of the State of New Jersey created by virtue of the Act of June 12, 1931, P. L. 575, and similar legislation of the State of New Jersey, approved June 30, 1931, as Chapter 391 of the Laws of New Jersey of 1931. As a result of this legislation the compact embodying the provisions of these acts was entered into on July 1, 1933, by the Governor of Pennsylvania and representatives of the State of New Jersey, which compact was in turn ratified by the Congress of the United States. The Commission operates the Philadelphia-Camden Bridge over the Delaware River and is intended to promote the use of that river as a commercial highway to the sea.

Article X of the acts of the two states and of the compact provides as follows:

*“The bonds or other securities or obligations which may be issued by the commission for any of its authorized purposes, and as security for which there may be pledged the tolls, rents, rates and other revenues, or any part thereof, of any properties or facilities owned, operated or controlled by the commission (including the aforesaid existing bridge across the Delaware River and the aforesaid facilities for the transportation of passengers across the said bridge), are hereby made securities in which all state and municipal officers and bodies of the Commonwealth of Pennsylvania and State of New Jersey, all banks, bankers, trust companies, savings banks, saving and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever, who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may properly and legally invest any funds, including capital belonging to them or within their con-*

*trol, and said bonds or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or agency of the Commonwealth of Pennsylvania or the State of New Jersey for any purpose for which the deposit of bonds or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.*" (Italics ours.)

Section 41 (a) 1 of the Fiduciaries Act of June 7, 1917, P. L. 447, as last amended by the Act of April 26, 1929, P. L. 817, provides that funds in the hands of a fiduciary may be invested:

"\* \* \* in the stock or public debt of the United States; or in the public debt of this Commonwealth; or in bonds or certificates of debt constituting the direct and general obligation of any of the counties, cities, boroughs, townships, school districts or poor districts of this Commonwealth; or in first mortgages on real estate in this Commonwealth, securing bonds or other obligations not exceeding in amount two-thirds of the fair value of such real estate; \* \* \*"

Bonds of The Delaware River Joint Commission do not come within the categories named. They do not constitute part of the public debt of the Commonwealth nor are they obligations of any governmental subdivision thereof. The Commission is not a political subdivision of Pennsylvania and its bonds are not real estate bonds. They are revenue bonds, as security for payment of which is the revenue of the Commission received principally from its operation of the bridge connecting the cities of Philadelphia and Camden.

Therefore, the Fiduciaries Act as amended is not authority for the investment of funds in the hands of a fiduciary in the bonds of the Commission.

There is, however, no prohibition upon the investment of trust funds in the Commission's bonds. Section 22 of Article III of the Constitution, in effect until amended by the electors in November, 1933, prohibited the General Assembly from authorizing the investment of trust funds "in the bonds or stock of any private corporation." While this section has been amended to read as follows:

"The General Assembly may, from time to time, by law, prescribe the nature and kind of investments for trust funds to be made by executors, administrators, trustees, guardians and other fiduciaries."

the Legislature has not yet exercised the powers therein granted.

At the time the bonds of the Commission were issued, namely, September 1, 1933, the prohibition of the Constitution was still in effect.

However, The Delaware River Joint Commission is not a private corporation. As stated in Article I of the Act of 1931, The Commission is:

“\* \* \* a body corporate and politic \* \* \* which shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and which shall be deemed to be exercising an essential governmental function in effectuating such purposes, to wit:”

Bonds of the Commission are not affected by the constitutional provision in effect on September 1, 1933. Under Section 22 of Article III of the Constitution, as amended, the Legislature has authority to make the bonds legal investments for trust funds.

Therefore, it is our opinion that Article X of the Act of June 12, 1931, P. L. 575, enlarges the field for the investment of trust funds provided by the Act of 1917. The later act does not refer to the former, and neither specifically amends nor repeals it. But it does in effect enlarge its terms and expand the field in which fiduciaries may make investments.

The Legislature has clearly provided for the investment by fiduciaries of funds in their hands in bonds of The Delaware River Joint Commission.

Therefore, you are advised that under the provisions of the Act of June 12, 1931, P. L. 575, authority is given to fiduciaries in the Commonwealth of Pennsylvania to invest funds in the bonds of The Delaware River Joint Commission which are legal investments for trust funds.

Very truly yours,

DEPARTMENT OF JUSTICE,

HAROLD D. SAYLOR,

*Deputy Attorney General.*

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### OPINION NO. 150

*Banks and banking—Institutions incorporated under Act of May 13, 1876, P. L. 161—Bonds in favor of the Commonwealth on employes.*

The Act of 1876 is no longer in effect and there is no obligation on a bank created under its provisions to continue bonds on its employes in favor of the Commonwealth. If bonds required by Section 513 of the Banking Code of officers, directors, trustees, or employes of an institution, who receive payments of moneys or handle securities, are given in only nominal amount, it is within your discretion