

File No. 5729 Continued.

must include the surplus funds, which after all represent the accumulation of earnings from monies deposited.

These surplus funds aggregate between five and six million dollars of the various Baltimore institutions, representing a state tax in excess of \$3,000 and a city tax in excess of \$9,000, if the same could now be collected.

The same section of the code (89) provides for the making of reports by the banks to the State Tax Commissioner and authorizes him to calculate the amount of franchise tax at the rate mentioned in the section and to apportion the same between the city and state. No provision is made for a review of the State Tax Commissioner's decision in fixing the basis upon which the tax is imposed. Very probably it was not supposed that any controversy would ever arise on this subject.

We believe that the most effective way of bringing this new phase of the question to his attention, would be through a communication from you referring him to the recent definition of the phrase "total amount of deposits" by the Court of Appeals, and asking him, in case he should not be willing to accept the view that surplus funds are to be included, to secure a ruling on the point from the Attorney General.

As the State Tax Commissioner usually acts on savings banks accounts early in January (in order to allow them to get the benefit of the heaviest local discount) we would earnestly request you to take up this matter immediately; otherwise he may decline to reopen calculations already made by him and certified to the City.

Very truly yours,

(Signed) Oscar Leser.

OPINION.

File No. 5729.

LAW DEPARTMENT.

Baltimore, January 9, 1907.

Hon. Buchanan Schley,
State Tax Commissioner,
Annapolis, Md.

Dear Sir:-

The Court of Appeals in the very recent case of the State of Maryland vs. the Mayor and City Council of Baltimore, Daily Record, December 27, 28, 1906, in speaking of savings banks used the following