

File No. 5729 Continued.

OPINION.

language:

4247

"From the nature of the business conducted by banks of that description, which do not ordinarily have any capital stock, the entire assets of the institution must be represented by the total amount of its deposits invested and uninvested."

It is obvious, therefore, that the total amount of deposits, in order to represent the entire amount of assets, must include the surplus funds, which merely represent the accumulation of earnings from money deposited.

Section 89 of Article 81 P.G.L. (Edition of 1904) provides:

"Every savings bank, institution or corporation organized for receiving deposits of money and paying interest thereon, shall pay, annually, a franchise tax, to the amount of 1/4 of one per cent on the total amount of deposits held by such savings bank, institution or corporation."

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Under this section, I am informed, it has been the practice of savings banks to omit from their report to the State Tax Commissioner the amount of surplus funds held by such banks. Whatever doubt there may have been as to whether the language of section 89 of Article 81 embraced the surplus or not, it is now (it is fair to argue) removed by the construction put upon said section by the Court of Appeals in the State and City case.

These surplus funds aggregate between five and six million dollars in the various Baltimore institutions, therefore representing a state tax in excess of three thousand dollars and a city tax in excess of nine thousand dollars, if the same is properly collectible.

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Section 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 the state. (No provision appears to have been made for a review of the State Tax Commissioner's decision in fixing the basis upon which the tax is imposed.)

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It is very important for the state and city to know just what their rights are and what the obligations of the savings banks, and I write to ask that you kindly submit this matter to the Attorney General for his opinion as to whether or not surplus funds are to be included in fixing the basis upon which the franchise tax is to be imposed upon savings banks.

The language employed by the Court of Appeals seems to be decisive of this matter, and I bring it to your attention so that the views of the Attorney General may be had as rapidly as possible.

Very truly yours,

(Signed) W. Cabell Bruce,

City Solicitor.