

NOVEMBER 17, 1950.

HON. WALTER T. MARGETTS, JR.,
State Treasurer,
State House,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 77.

DEAR SIR:

We have before us your letter of October 16, 1950, and enclosure, requesting an opinion relative to the status of the Columbus Trust Company, in liquidation.

It appears that the Columbus Trust Company was a duly authorized banking corporation of this state and that it conducted business as such until July-1948, when a defalcation occurred which required liquidation. The former directors, in their capacity as trustees in liquidation, turned certain of the assets over to another bank, and the remainder of them to the Federal Deposit Insurance Corporation to liquidate and to reimburse itself for moneys advanced because of the defalcation. It further appears that the Federal Deposit Insurance Corporation has now recovered its advances and it is returning certain remaining assets of the trustees which they will continue to liquidate, and upon completion they will distribute the proceeds thereof among the stockholders.

Additional inquiry made by us to the Department of Banking and Insurance reveals that at the time of the defalcation voluntary proceedings in dissolution were taken pursuant to the statute then in force.

You inquire of us as to "whether the Columbus Trust Company in liquidation still comes under the Banking and Insurance Department, or whether because they are no longer doing banking and merely liquidating, they are considered an independent corporation and will have to file state franchise taxes."

In answer to your first question, we are of the opinion that the Department of Banking and Insurance relinquished its jurisdiction over the affairs of the bank at the time of its voluntary dissolution, and consequently, that department is not concerned with the liquidation proceedings. With reference to your second question, we are of the opinion that the trustees, in winding up the affairs of the former bank, do not constitute themselves an independent corporation subject to the state franchise tax.

The dissolution took place under R. S. 17:4-118 (suspended by Chapter 67, P. L. 1948, known as The Banking Act of 1948.) Under that act the directors are constituted the trustees for the purpose of the liquidation, subject to the order of the court. Consequently, the remaining liquidation proceedings will follow a pattern similar to that of any other corporation in liquidation, and we know of no authority which constitutes the trustees as an "independent corporation."

A reading of the Corporation Business Tax Act, Chapter 162, P. L. 1945, as amended, which provides for a corporation franchise tax, clearly indicates that it applies to corporations in the usual sense of the term, and not to corporations which have ceased to exist and are having their affairs wound up in the manner provided by statute.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: OLIVER T. SOMERVILLE,
Deputy Attorney General.