

When the bonds are actually to be issued, which will be after a determination is made as to the interest rate and the price at which the bonds are to be sold, the Authority will have to obtain an assent from the State Officials. Without such assent the Trustee under the General Bond Resolution would not have authority to authenticate the proposed new bonds.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: HAROLD KOLOVSKY
Asst. Attorney General

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FEBRUARY 8, 1956

AARON K. NEELD, *Director*
Division of Taxation
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-8

DEAR MR. NEELD:

You have requested an opinion (1) whether the purchase of accounts receivable by a corporation constitutes the doing of a financial business within the meaning of N.J.S.A. 54:10B, and (2) whether the phrase "discounting and negotiating" as used in this statute impliedly includes "purchasing" so as to subject such a corporation's activities to a tax under the Financial Business Tax Act.

The facts, as stated by you, are that the American Commercial Corporation, a New Jersey corporation, purchases from its customers receivables, book debts, notes, acceptances, drafts and other choses in action by written agreement. On making such purchases, American pays 75% of the face value of the accounts receivable to the customer from moneys it borrows from banks. American acquires full and absolute title at the time of purchase. As the debtor makes payment to American, the 25% originally withheld is paid to the customer, subject to a service charge levied by the corporation. Such service charge is the only source of income of American. You also state the corporation's activities do not appear to be in substantial competition with the business of national banks.

The section of the Financial Business Tax Law defining financial business is N.J.S.A. 54:10B-2(b), which reads:

"'Financial business' shall mean all business enterprise which is (1) *in substantial competition* with the business of national banks and which (2) employs moneyed capital with the object of making profit by its use as money, *through discounting and negotiating* promissory notes, drafts, bills of exchange and other evidences of debt; buying and selling exchange; making of or dealing in secured or unsecured loans and discounts; * * *. This shall include, without limitation of the foregoing businesses commonly known as industrial banks, dealers in commercial paper and acceptances, sales finance, personal finance, small loan and mortgage financing businesses, as well as any other enterprise employing moneyed capital coming into competition with the business of national banks; * * *." (*Italics added*).

As an aid to the interpretation of the foregoing statute, N.J.S.A. 17:16B-1(e) defines a sales finance company as follows:

"Sales finance company means and includes any person engaging in this State in the business, in whole or in part, of acquiring retail installment contracts from retail sellers by *purchase, discount* or pledge, or by loan or advance to a retail seller on the security thereof, or otherwise."
(Italics added).

Since N.J.S.A. 54:10B-2(b) states that it includes the business of "sales finance" *without limitation* by the words "discounting and negotiating", and the foregoing definition of sales finance company includes the acquisition by "purchase" as well as by "discount", it would appear to be the legislative intent to include by implication the word "purchase" in N.J.S.A. 54:10B-2(b), since the statutes are in *pari materia*.

" * * * in the business of banking, 'discount', in the ordinary acceptance of the term, includes what is called 'purchase'." *Danforth v. National State Bank of Elizabeth*, 48 Fed. 271 (3 Cir. 1891); *Morris v. Third Nat. Bank of Springfield, Mass.*, 142 Fed. 25 (8 Cir. 1905).

"To negotiate means, among other things, to transfer, to sell, to pass, to procure by mutual intercourse and agreement with another, to arrange for, to settle by dealing and management." *Yerkes v. National Bank*, 69 N. Y. 382 (Ct. of Appeals 1877).

The word "negotiated" as used in the Negotiable Instruments Act, N.J.S.A. 7:2-30, is used in the sense of the word "transferred". *Fidelity Union Trust Co. v. Decker Co.*, 106 N.J.L. 132, at p. 136 (E & A 1930).

The statute setting forth the powers of national banks is 12 U.S.C.A., § 24, p. 18, which provides:

" * * * a national banking association * * * shall have the power
Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by *discounting and negotiating* promissory notes, drafts, bills of exchange, and other *evidences of debt*; * * *"
(Italics added).

The wording of the powers granted in this statute is comparable to part of the definition of "financial business" in N.J.S.A. 54:10B-2(b)(2), *supra*.

Competition means there is a *material* amount of moneyed capital engaged in a business which bids against national banks for the business which they are authorized to do. *First National Bank v. City of Hartford*, 187 Wisc. 290, 203 N.W. 721 (Sup. Ct. of Wisc. 1925); reversed on other grounds, 273 U.S. 548, 47 S. Ct. 462 (1927). Competition may exist although it does not extend to all aspects of the business of national banks. *Crown Finance Corp. v. McColgan*, 23 Cal. 2d 280, 144 P. 2d 331 (Sup. Ct. of Cal. 1943).

Few banks undertake loans on accounts receivable, since they are too risky. The business has devolved upon specialized brokerage or discount houses, and the banks, instead of lending directly by discounting accounts receivable, lend to the discount house on the security which it can provide. See *Westerfield - Money, Credit and Banking*, 941 (Rev. Ed. 1947).

It is our opinion that if the Corporation Tax Bureau finds that the operations of American Commercial Corporation are not in substantial competition with the business of national banks, the corporation is not taxable under the Financial Business Tax Law even though its purchases of accounts receivable are within the statutory definition of "discounting and negotiating . . . evidences of debt."

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: ROBERT E. FREDERICK
Deputy Attorney General

FEBRUARY 8, 1956

MR. HARRY E. BLOCH
Assistant Clerk
Hudson County Board of Elections
591 Summit Avenue
Jersey City 6, New Jersey

MEMORANDUM OPINION—P-9

DEAR MR. BLOCH:

You have requested our opinion as to the right of the Hudson County Board of Elections to further revise and re-adjust election districts in a municipality, pursuant to the Election Law (R.S. 19:4-7), after the municipality has re-adjusted its ward and boundary lines and divided such wards into election districts, pursuant to the provisions of the Revised Statutes, Title 40, Chap. 44, Sections 40:44-1 through 40:44-8.

Your inquiry presents this factual situation:

"The facts in the matter are as follows: The Township of North Bergen, Hudson County, has re-warded its Township pursuant to a resolution, copy of which is enclosed herewith. As a result of said Ordinance, Ward Commissioners were appointed and proceeded to divide the Township into wards pursuant to Revised Statutes 40:44-8 and thereafter, said Ward Commissioners proceeded to establish District Lines in said wards pursuant to said Revised Statutes 40:44-8."

Revised Statutes, Title 40, Chap. 44, establishes a procedure for the division of municipalities into wards and districts. The governing body of any municipality may by ordinance provide for the division of such municipality into wards, or where such municipality has heretofore been so divided, it may by ordinance provide for a change of lines and boundaries of wards or for an increase or decrease in the number thereof (Sec. 1). Upon the ordinance becoming effective the mayor or other chief executive officer of the municipality shall appoint four commissioners to fix and define the lines and boundaries of such wards. The commissioners shall, within ten days after their appointment, take and subscribe an oath to faithfully and impartially perform the duties imposed upon them (Sec. 2). The commissioners shall, within