

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

673.

BOARD OF EDUCATION—WHEN DEPOSITORY OUTSIDE THE STATE
MAY BE SELECTED—DISCUSSION OF SCHOOL BOARD DEPOSITORIES.

SYLLABUS:

1. *A board of education in a school district containing two or more banks has no authority to select as its depository bank a bank located outside the state of Ohio unless after advertising for bids for the carrying of depository accounts the board should determine that there has been collusion between the bidders, in which event it may reject any and all bids and arrange for the deposit of its funds in a bank or banks that are conveniently located without the district either within or without the state. Such bank so selected must conform to the provisions of law with reference to the payment of interest and the furnishing of proper security.*

2. *A board of education in a school district containing less than two banks is empowered to enter into a contract for the deposit of its funds with one or more banks located either within or without the state of Ohio. Such bank must have been determined by said board of education to be conveniently located, and must upon competitive bidding offer the highest rate of interest of any of the banks entering into such competition. Such interest shall not in any case be less than 2% for the full time the funds or any part thereof are on deposit, and such bank must furnish proper security as provided by law.*

COLUMBUS, OHIO, June 29, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—You have requested my opinion with reference to the following:

“You are respectfully requested to furnish this department with your written opinion upon the following matter:

Question 1. May a board of education of a school district containing two or more banks legally designate a bank located outside of the state as depository of the funds of the district,

Question 2: May a board of education of a school district containing no bank or but one bank designate a bank located outside of the state if conveniently located, as depository of the school funds of the district?”

Section 7604, General Code, provides in part as follows:

“That within thirty days after the first Monday in January, 1916, and every two years thereafter, the board of education of any school district,

by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer."

Sections 7605, 7606 and 7607, General Code, read as follows:

"Sec. 7605. In school districts containing two or more banks such deposits shall be made in the bank or banks, situated therein, that at competitive bidding offer the highest rate of interest which must be at least two per cent. for the full time funds or any part thereof (as) are on deposit. Such bank or banks shall give a good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, or farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum not less than the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond. But no contract for the deposit of school funds shall be made for a longer period than two years."

"Sec. 7606. The board shall determine in such resolution the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given. All proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity and shall be open at all times to public inspection. If in the opinion of a board of education there has been any collusion between the bidders, it may reject any or all bids and arrange for the deposit of funds in a bank or banks without the district as hereinafter provided for in districts not having two or more banks located therein."

"Sec. 7607. In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, which shall not be less than two per cent for the full time the funds or any part thereof are on deposit. Such bank or banks shall give good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, or farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum at least equal to the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks, and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond."

Section 7606, General Code, provides for competitive bidding for the deposits of the funds belonging to the board of education, and Section 7608, General Code, provides what the resolution spoken of in Section 7604 shall contain.

It will be noted from the provisions of the foregoing sections of the statutes that when a school district contains two or more banks, one of the banks situated within the district shall be selected as the district's depository, unless the board of education is of the opinion that there has been collusion between the bidders, in

which event the board may designate such a bank without the district as is provided for in districts not having two or more banks located therein. In a district, which contains less than two banks, the board of education is authorized to select one or more banks that are conveniently located and offer the highest rate of interest as the depository for its school funds.

The legislature has provided by statute for depositories for funds belonging to the state and to the various subdivisions thereof. See Sections 321, et seq., of the General Code, relating to the deposit of state funds; Sections 2715, et seq., of the General Code, pertaining to county funds; and Sections 3322, et seq., of the General Code, which make provisions for township funds.

Municipal depositories are provided for by Sections 4295, et seq., of the General Code.

It will be noted that in making provision for these various depositories, state, county, township and municipal, the authorities are limited to designating banks within the state of Ohio, excepting that county commissioners may, if no bank or trust company within the county meets the requirements for county depositories, select any other bank or banks incorporated under the laws of this state or organized under the laws of the United States as inactive depositories.

Boards of education are limited in the selection of a depository bank to a bank within the district if two or more banks are located within the district, except when, in the opinion of the board, there has been collusion between the bidders. If less than two banks exist within the district the board is authorized to enter into a contract with one or more banks as depository banks that are conveniently located and offer the highest rate of interest without any limitation as to their location.

In an opinion of this department reported in Opinions, Attorney General for 1918, page 402, wherein the statutes with references to depository banks for boards of education were under consideration, it was said:

“It is within the discretion of the board of education to determine when banks are conveniently located within the meaning of Section 7607, General Code.”

In the course of the opinion it was said that this discretion is vested in the board of education by virtue of the terms of Section 7607, supra, and was not subject to control except in case of fraud, collusion, or clear abuse of such discretion.

Boards of education, as was said in the case of *State, ex rel., Clark vs. Cook, Auditor*, 103 O. S. 465, are limited in the exercise of their powers to such as are clearly and distinctly granted. However, when a board of education is vested with discretion in the determination of matters, that discretion is absolute, and will not be interfered with in the absence of fraud or the clear abuse thereof.

In the case of *Brannon, et al., vs. Board of Education*, 99 O. S., 369, it was said:

“A court has no authority to control the discretion vested in a board of education by the statutes in this state or to substitute its judgment for the judgment of such board upon any question it is authorized to determine;
* * * ”

and in the case of *State, ex rel. Maxwell vs. Schneider*, 103 O. S. 492, Judge Matthias said:

“The action of a public officer or of a board within the limits of the jurisdiction conferred by law is not only presumed to be valid but is also presumed to be in good faith and in the exercise of sound judgment.”

The legislature in granting powers to depository boards for the selection of depository banks have in the provisions relating to state, county, township and municipal depository boards (except in the provisions relating to boards of county commissioners and to boards of education which determine that there has been collusion between bidders in school districts having two or more banks located therein) and in the provisions authorizing boards of education in the selection of depository banks in districts containing two or more banks, limited such powers with reference to the geographical location of the banks. On the other hand, the legislature has not limited boards of education in school districts containing less than two banks, and from this fact it seems apparent that it was the intention of the legislature to give to a board in such a district complete discretion of determining the location of the bank which may be selected as its depository; and I know of no provision of law to prevent the selection of a bank located without the state, if a board of education of a district containing less than two banks, in the exercise of its sound discretion, should determine that such a bank is conveniently located and offers the highest rate of interest, not less than two per cent, for the full time the funds or any part thereof are on deposit.

The selection of a depository bank must of course be done by competitive bidding, and the bank selected must furnish the proper security to secure the deposits made, as provided by law.

Moreover, it seems clear that the legislature in the enactment of Section 7607, supra, wherein provision is made for the selection of a depository bank by a board of education in a school district containing less than two banks must have had in mind the various provisions of law with reference to other depositories where limitations were made as to the geographical location of the bank selected, inasmuch as Section 7606 was amended and re-enacted in its present form in 1925, whereas the provisions of law with reference to the other depositories had been made previously.

Specifically answering your questions in their order:

1. It is my opinion that a board of education in a school district containing two or more banks is not empowered to select as its depository bank a bank outside of the state of Ohio, unless such board should determine that there has been collusion between the bidders, in which event, it may reject any and all bids and designate such a bank without the district as is provided for in districts not having two or more banks located therein.

2. A board of education in a school district containing less than two banks is authorized to enter into a contract for the deposit of its funds with one or more banks that are conveniently located and offer the highest rate of interest, not less than two per cent for the full time the funds or any part thereof are on deposit, and the discretion thus vested in them is sufficiently broad to permit the selection of any bank located either within or without the state of Ohio, in the absence of fraud, collusion or abuse of discretion.

Respectfully,
EDWARD C. TURNER,
Attorney General.