

OPINION NO. 962

Syllabus:

School district boards of education are obligated to make deposits of public moneys in public depositories in conformity with the terms of the offer embodied in the accepted application of the designated depository and such boards may not accept as evidence of such deposits any instrument whether denominated "savings certificate" or otherwise, which is inconsistent with either the provisions of Sections 135.01 to 135.23, inclusive, Revised Code, or the last designation of depositories and award of deposits as made by said board in conformity with said sections.

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To: Lynn B. Griffith, Jr., Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, April 6, 1964

Your recent request for my opinion reads as follows:

"I request your opinion on the legality of investing school funds obtained from the sale of voted authorized bonds in savings certificates of the school's depository until such time as the funds are needed for their voted purpose.

"It is our understanding that the common practice has been to deposit the funds received after the actual sale and delivery of the bonds has occurred in the regular depository of the school district and derive the interest accrued thereon until such time as the actual expenditure of these funds occurs to carry out the purpose of the bond issue.

"Several school districts are desirous of purchasing savings certificates at the interest rate of 3½ per cent from their regular depository with the proceeds of the bond sale. The certificates are to be purchased for a period of ten months from March 1, 1964 until December 31, 1964. Then, as the building program progresses, to issue notes against the certificates at the rate of 3 per cent until December 31, 1965; in one instant case the initial amount of the bond issue was \$1,200,000.00.

"If this were done, the school boards could earn an additional minimum of \$3,200.00 over the regular rate of interest than they would otherwise derive from a straight deposit of these funds.

"The question simply stated then is whether or not these school boards can purchase such a savings certificate under the present Uniform Bond Law in Chapter 133 of the Ohio Revised Code."

It appears from your inquiry that the "savings certificates" referred to are evidence of some form of time deposit as defined in Section 1101.01, Revised Code, rather than of a demand deposit. Subdivisions (H) and (I) of said section contain these definitions:

"(H) 'Time deposits' means all deposits the payment of which cannot legally be required within thirty days.

"(I) 'Demand deposits' means all deposits the payment of which can legally be required within thirty days."

Section 3313.51, Revised Code, provides:

"In every school district the clerk of the board of education shall be the treasurer of the school funds. * * * All moneys received by a clerk of a school district from any source whatsoever shall be immediately placed by him in a depository designated by the board of education of such school district, as provided by sections 135.01 to 135.23, inclusive, of the Revised Code."

From this section it is clear that all money received by a school district treasurer is public money subject to the Uniform Depository Act, Sections 135.01 to 135.23, inclusive, Revised Code. To the extent that Section 3318.111, Revised Code, may be an exception to this general statement, it may be disregarded, as it is clearly inapplicable to your inquiry.

The Uniform Depository Act provides that insofar as

deposits of public moneys by subdivisions are concerned, only two types of deposits are authorized. These are defined at subdivisions (E) and (F) of Section 135.01, Revised Code, as follows:

"(E) 'Active deposit' means a public deposit payable or withdrawable, in whole or in part, on demand.

"(F) 'Inactive deposit' means a public deposit which is not payable on demand."

Section 135.07, Revised Code, provides:

"Each governing board shall, at least three weeks prior to the date when it is required by section 135.11 of the Revised Code to designate public depositories, by resolution, estimate the aggregate maximum amount of public funds subject to its control to be awarded and be on deposit as inactive deposits. The governing board of each subdivision shall cause a copy of such resolution, together with a notice of the date on which the meeting of the board for the designation of such depositories will be held and the period for which such inactive deposits will be awarded, to be published once a week for two consecutive weeks in two newspapers.
* * *

"All deposits of the public moneys of the state or any subdivision made during the period covered by the designation in excess of the aggregate amount so estimated shall be active deposits. * * *"

The governing board, referred to in the above quote, is, in the case of a school district, the board of education (see Section 135.01(J), Revised Code).

From the above-quoted portions of Section 135.07, Revised Code, two things are apparent. First, any deposit made in excess of the aggregate amounts estimated in accordance therewith to be made as inactive deposits must be made as active deposits. Second, by definition, active deposits are incompatible with any sort of time deposit. It follows therefrom that unless the board of education included the money derived from the sale of the bonds, which is the subject of your inquiry, in its last regular estimate of the amounts to be awarded as inactive deposits said money must be deposited as active deposits, i.e., deposits payable or withdrawable on demand; and conversely, such money may not be deposited in any form of time deposit.

There remains then only the question of whether "purchasing savings certificates" may satisfy the statutory requirement for inactive deposits. The law controlling the awarding and maintaining of inactive deposits

is found in Sections 135.07, 135.08 and 139.09, Revised Code. Briefly, these sections require that the award and designation be made at certain prescribed times pursuant to public notice; that applications be filed by institutions desiring to become public depositories, which among other things must state the rate of interest which the institutions propose to pay; and that on award of such deposits be made to the institutions proposing to pay the highest permissible rate of interest.

At this point, it may be observed that the term "savings certificate" has no fixed definition. It is employed to designate a form of the certificate of deposit. However, the exact form of the certificate of deposit so designated may vary from bank to bank depending upon the individual bank's rules and regulations. A savings certificate may be negotiable or only assignable; it may have a fixed maturity date or be for an indefinite term; in some instances it may provide that the deposit represented thereby cannot be withdrawn for a specified period; it may provide for the payment of no interest if withdrawn before a specified time, for the payment of a fixed rate of interest throughout its life, or for the payment of a variable rate of interest with the rate increasing after a specified period of time.

Certain of the conditions enumerated above would render a certificate subject thereto unacceptable as evidence of an inactive deposit. For example, Section 135.20, Revised Code, clearly anticipates the need to transfer and makes provision for transfers from inactive deposits to active deposits. Further, Section 135.22, Revised Code, provides:

"Interest on inactive deposits shall be paid by the public depository to the treasurer quarterly, computing the time of payment from the date of deposit, or at any time when withdrawals are made or the account is closed. * * *"

Thus, the legislature has not authorized the making of inactive deposits under terms which may result in a loss of interest.

Finally, assuming that the proceeds of the bond sale were included in the board of education's last regular estimate of the funds to be awarded as inactive deposits, Section 135.13, Revised Code, specifies that the designation so made constitutes an acceptance of the offer embodied in the application of the institution designated as a public depository and creates an obligation upon the board to make deposits in, and withdrawals from, such depository during the period of designation, in accordance with the Uniform Depository Act. Thus, the relationship is contractual in nature and any variation of the terms of the application accepted without the public notice required by Section 135.07, Revised Code, without the "bid" with respect to the interest to be paid as required by Section 138.08, Revised Code, or at a time

other than that provided by Section 135.11, Revised Code, would be improper.

I am aware that Section 135.14, Revised Code, provides that inactive deposits may be evidenced by negotiable certificates of deposit or,

"* * * in the discretion of the treasurer, by written contracts, each of which shall provide that neither the whole nor any part of such deposit may be withdrawn except after written notice given by the treasurer a specified period prior to withdrawal which period shall in no event be less than thirty days nor more than one year and a day."

However, it is my opinion that said section does not authorize a treasurer to make deposits under contracts entered by means of purchasing savings certificates, or otherwise, if the terms of such contract are inconsistent with other provisions of the Uniform Depository Act.

Although perhaps unnecessary, it seems appropriate to observe that if the interest rate applicable to the "savings certificate" to which you refer is permissible within the meaning of "permissible rate of interest" as defined in Section 135.01, Revised Code, there would appear to be no reason why an institution desiring to operate as a public depository should not specify such rate in its application for designation.

On the basis of the foregoing, and in answer to your specific question, it is my opinion that school district boards of education are obligated to make deposits of public moneys in public depositories in conformity with the terms of the offer embodied in the accepted application of the designated depository and such boards may not accept as evidence of such deposits any instrument whether denominated "savings certificate" or otherwise, which is inconsistent with either the provisions of Sections 135.01 to 135.23, inclusive, Revised Code, or the last designation of depositories and award of deposits as made by said board in conformity with said sections.