

4026

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN LUCAS COUNTY—BERNARD G. KESTING.

COLUMBUS, OHIO, February 4, 1932.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval bond in the penal sum of \$5,000.00, upon which the name of Bernard G. Kesting appears as principal and Massachusetts Bonding and Insurance Company appears as surety, conditioned to cover the faithful performance of the duties of the principal as Resident District Deputy Director assigned to Lucas county.

Finding said bond legal and proper as to form, I have endorsed my approval thereon and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4027

SCHOOL FUNDS—DEPOSITORY BANK—BOARD OF EDUCATION MAY DEPOSIT AMOUNT EQUAL TO BANK'S PAID IN CAPITAL STOCK AND SURPLUS.

SYLLABUS:

The amount of school funds that may be deposited in a bank by a board of education by force of Section 7604 of the General Code, may not exceed the amount of the bank's paid in capital stock and surplus.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

COLUMBUS, OHIO, February 5, 1932.

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The Board of Education of the Tiffin City School District has asked for an opinion upon a question involving the deposit of school funds in a National Bank in this city.

The board wants to know how much money it may deposit in such a bank, which has a paid in capital stock of \$100,000.00 and a surplus of \$50,000, making a total of \$150,000.00.”

This matter is governed by Section 7604 of the General Code, which reads 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. But no bank shall receive a deposit larger than the amount of its paid-in capital stock and surplus and in no event to exceed one million dollars, except that in case the Board of Education shall find that it will be for the best interest of any school district such bank or banks shall be permitted to receive an amount in no event to exceed five million dollars.”

Prior to 1927 the above statute provided that no bank should receive a deposit larger than the amount of its paid in capital stock. While the statute was in force in that form a former Attorney General rendered an opinion which may be found in the Opinions of the Attorney General for 1922 at page 278, in which he reviewed the history of the statute and held:

"The amount of school funds that may be deposited in a bank by a board of education under authority of Section 7604, General Code, can not in any case, or under any circumstances, exceed the amount of the bank's paid in capital stock."

In 1927 the statute was amended to read as it now does (112 O. L., 94). It will be observed that the statute as amended provides that a bank may receive a deposit no larger than the amount of its paid in capital stock *and surplus*. By reason of the amendment it appears clear that the legislature intended to change the limitation on the amount that a bank might receive and the language used in doing so is clear and needs no interpretation or construction.

I am therefore of the opinion in specific answer to your question that where a bank has a capital stock of \$100,000.00 and a surplus of \$50,000.00 the board of education is authorized by force of Section 7604, General Code, to deposit therein as much as \$150,000.00.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4028

BANK—PARTIAL LIQUIDATION—MAY SELL PRIOR PARTICIPATING MORTGAGE WHEN.

SYLLABUS:

When, in order to obtain a partial liquidation of a mortgage owned by a bank, the bank receives the entire proceeds of a new mortgage upon the same priority which secures the bank's loan and applies such funds as a credit on its loan, such bank has the legal capacity to waive the priority of the remainder of its loan in favor of the new mortgage thus placed upon the property the proceeds of which the bank has received and applied on the indebtedness to it.

COLUMBUS, OHIO, February 5, 1932.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—Your recent request is as follows:

"A bank has a loan of \$10,000.00 secured by a first mortgage on real estate.

An insurance company, in order that the bank may obtain cash, makes a loan in the amount of \$8,000.00 on the same parcel of real estate but as a condition precedent requires that the loan made by it be secured by a first mortgage on said real estate.

Is there any legal impediment to the bank waiving priority of its first mortgage lien in favor of the insurance company, in the amount of the loan made by the insurance company, to wit; \$8,000.00, in order that said insurance company may have a first mortgage on the premises?"

In answering your inquiry, I do not desire to be interpreted as passing upon