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BONDS—WHEN ISSUED UNDER HOUSE BILL NO. 706 BOND ISSUING AUTHORITY ENTITLED TO RECEIVE ONLY SUFFICIENT TO PAY PRINCIPAL AND INTEREST OF BONDS, ALTHOUGH AMOUNT THEREOF LESS THAN AMOUNT OF CLAIM AGAINST DEPOSITARY —EFFECT OF ISSUING SUCH BONDS UPON DEPOSITARY CONTRACT.

SYLLABUS:

When bonds are issued under authority of House Bill No. 706, passed by the 90th General Assembly, even though the amount thereof be less than the amount of the claim which the bond issuing authority may have against the depository, such bond issuing authority is entitled to receive no more than is sufficient to pay the principal and interest of the bonds, and when the total amount received from the interest and principal of such securities, and from the payment of any dividends from the liquidation of a bank, equals the requirements of the bond retirement fund from which such bonds are to be redeemed, any remaining securities and any remaining depository balance in such bank must be turned over to the bank, or to its liquidating officer, successor or assignee, and the bank is released from any claim which the subdivision may have had against it by reason of the depository contract.

COLUMBUS, OHIO, October 24, 1933.

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

GENTLEMEN:—I acknowledge receipt of your communication in which you request my opinion on two questions which have been submitted to you by a board of education of a city school district, relating to House Bill No. 706, passed by the 90th General Assembly.

This board of education desires to issue bonds under the authority of this act in anticipation of the collection of the principal and interest of the first mortgages which it holds as security for the deposit of its funds in a bank which has defaulted in its depository contract. This contract provides that in case of default the bank's entire right, title and interest in these securities and insurance policies covering them shall be transferred to the board of education. These securities are now in possession and control of the board and all payments of principal and interest thereon are being collected by the bank as the board's agent and credited to its account.

The board's letter to you says:

"We have consented, at the bank's request, to payment of insurance premiums on the property mortgaged by the bank from first interest and principal collected, in the event the owner of the property defaults.

It is our desire to continue to exercise such control and ownership over these securities as will preserve their value and to do nothing with them as an owner without the consent of the conservator of the bank.

Before proceeding to issue and sell bonds under H. B. 706 we would like an opinion on two questions which arise:

First: In exercising such control over securities as indicated above are we complying with Sec. No. 5 of H. B. 706?

Second: In the event we issue and sell bonds under H. B. 706 are we jeopardizing our chances of a full settlement with the bank should it be reorganized or liquidated?"

Section 5 of House Bill No. 706 reads as follows:

"Immediately upon the issuance and sale of bonds as authorized by this act, the possession and control of such securities, and the management thereof, subject to the further disposition thereof as authorized by sections 1 and 4 of this act, shall be transferred to and vested in the authority of such county, municipal corporation, township or school district having charge of the administration of the bond retirement fund thereof. Such authority shall have and exercise all powers and rights, privileges and immunities of an owner, with respect to such securities, subject to the control of the commissioners, the council, township trustees and board of education as the case may be, and unless otherwise specified in any resolution of such commissioners, council, township trustees, or board of education, shall, in case such securities consist of first mortgages accepted pursuant to section 2288-1 of the General Code, have power among other things and without prejudice to the general grant of power herein made, to pay from proceeds of such securities, taxes, insurance premiums, and for repairs and maintenance of property covered by any such mortgage, in case of default in any such respect on the part of the mortgagor or owner of the property, such payments to be made, subject in all cases to reimbursements by the person primarily liable therefor, from the fund for the retirement of the bonds herein authorized."

Of course, it is unnecessary to comply with this section until bonds are issued under authority of said act, but it seems to me that the board is doing, with respect to such securities, practically the same thing that is required by this section of the authority having charge of the administration of the bond retirement fund, except that the money realized from the principal and interest of such securities must be paid into the bond retirement fund from which such bonds are to be redeemed. Section 5 expressly provides that such authority shall have and exercise all powers, rights, privileges and immunities of an owner, with respect to such securities.

Section 2 of House Bill No. 706 provides that such bonds may be issued "in an amount not exceeding that of the moneys on deposit, the payment of which is secured by such securities after crediting thereto the amount realized from the sale or other disposition of any other securities pledged or deposited therefor, or in an amount not exceeding the value or amount ultimately to be realized from such securities to be determined by valuation made under oath by two persons who are conversant with the value of the assets represented by such securities, whichever amount shall be the lesser, plus an amount equal to the interest accruing on such securities during a period of not to exceed one year from and after the date of default of such bank in its capacity as depository." It is possible therefore that the amount of bonds which may be authorized under this act will be less than the amount of money on deposit in such bank. Section 4 of said act reads as follows:

"All principal and interest collected by the proper officer or agent of such county, municipal corporation, township, or school district, on account

of such securities, and the proceeds of any sale or other disposition of any of such securities, and any dividends received from the liquidation of such bank, shall be paid into the bond retirement fund from which such bonds are to be redeemed, until the aggregate of such payments equals the requirements of such fund, whereupon such securities, and any remaining depository balance, not anticipated by such bonds, to the extent then retained by such county, municipal corporation, township or school district, shall be assigned and delivered to the defaulting bank, or to its liquidating officer, or to its successor or assignee, together with a release or other instrument showing full satisfaction of the claim of such county, municipal corporation, township or school district against such bank or officer."

It follows therefore that when bonds are issued under authority of House Bill No. 706, passed by the 90th General Assembly, even though the amount thereof be less than the amount of the claim which the bond issuing authority may have against the depository, such bond issuing authority is entitled to receive no more than is sufficient to pay the principal and interest of the bonds, and when the total amount received from the interest and principal of such securities, and from the payment of any dividends from the liquidation of a bank equals the requirements of the bond retirement fund from which such bonds are to be redeemed, any remaining securities and any remaining depository balance in such bank must be turned over to the bank, or to its liquidating officer, successor or assignee, and the bank is released from any claim which the subdivision may have had against it by reason of the depository contract.

I realize that the foregoing conclusion will have the effect of precluding subdivisions from issuing bonds under House Bill No. 706 against collateral held by the subdivision when such collateral appraises in a substantially lesser amount than the amount of public funds on deposit in a closed bank. There is possibly considerable doubt as to whether or not the legislature intended to limit this act in such a way, but it is well established that in the interpretation of statutes the intention of the legislature must be determined from the language used, and when the meaning is clear the courts may not, by the insertion of words not used or the omission of words used, arrive at a supposed legislative intent. *Stanton vs. Realty Company*, 117 O. S. 345. In view of this well established principle, it is my judgment that the language of section 4 of the act here under consideration precludes any conclusion other than that hereinabove reached.

Respectfully,

JOHN W. BRICKER,
Attorney General.

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APPROVAL, BONDS OF WADSWORTH CITY SCHOOL DISTRICT,
MEDINA COUNTY, OHIO, \$36,039.10.

COLUMBUS, OHIO, October 24, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.