

missioners show the amount allowed by the then board to have been regular and according to law.

When the title to the land appropriated was acquired by the county, compensation therefor was immediately due to the land owner. As provided in the above quoted section of the Constitution, compensation must be made to the owner for property appropriated, and I see no reason why the owner's failure to take the amount allowed him at the time the proceedings were had, would estop his collecting at this time the money due him for the land appropriated.

Therefore, answering your question specifically, I am of the opinion that the board of county commissioners of Gallia County should pay the owner of the land the amount awarded to him in 1914.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2223.

SCHOOL DEPOSITORY BANKS—SECURITIES—MUST BE KEPT UNDER EXCLUSIVE CONTROL AND DOMINION OF BOARD OF EDUCATION.

SYLLABUS:

School depository banks which, at the instance of the board of education whose funds they receive on deposit, are permitted to furnish security for said funds by the hypothecation of certain securities, may not designate another bank as trustee for the holding, and disposal in case of default, of the securities so hypothecated, but must place them under the complete and exclusive control and dominion of the board of education whose deposits are to be thus secured.

COLUMBUS, OHIO, June 11, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

“The Mogadore Savings Bank of Mogadore, Ohio, has deposited with the First Trust and Savings Bank of Akron, Ohio, bonds, government and municipal, as security for the funds of two school districts. We are enclosing herewith the hypothecation of such bonds to the Akron Trust Company in trust and also correspondence in regard to the same.

Question: Does the making over of these bonds to the First Trust and Savings Bank of Akron constitute a proper security for the funds of the two school districts in question under the law?”

It appears that the Mogadore Savings Bank of Mogadore, Portage County, Ohio, was, sometime prior to May 21, 1928, duly designated by the board of education of the Mogadore Village School District, to be the depository of the funds of said village school district. Thereafter, under date of May 21, 1928, the Mogadore Savings Bank, for the purpose of furnishing security for deposits which might be made with it, executed and delivered to said board of education a certain instrument in writing, in the form of a bond, which reads, as appears from the copy enclosed with your letter, as follows:

“THE MOGADORE SAVINGS BANK

Mogadore, Ohio.

KNOW ALL MEN BY THESE PRESENTS: That The Mogadore Savings Bank, of Mogadore, Ohio, is held and firmly bound unto The Board of Education, Mogadore Village, Mogadore, Ohio, in the sum of TWENTY Thousand Dollars, (\$20,000.00), for the payment of which they bind themselves, their successors and assigns, firmly by these presents, and as security for the above amount hereby grants, bargains, conveys, transfers, assigns and delivers to The First Trust and Savings Bank, of Akron, Ohio, as Trustees, and its successors, all and singular, the following bonds, being of the face value of Twenty Thousand Dollars, (\$20,000.00), and described as follows:

\$4,000.00 United States Liberty Loan Bonds, \$16,000.00 Mogadore Village School Bonds

in trust nevertheless and to and for the trust, uses, and purposes, and subject to the terms and conditions following:

First: Said trustee shall collect and receive any and all interest hereafter accruing on said bonds, and shall pay and deliver said income to said The Mogadore Savings Bank, at its request, but said Trustee shall hold for the purpose above set forth said bonds above described.

Second: In the event said the Mogadore Savings Bank shall desire or request the delivery to it by the trustee of any of the above mentioned securities, said trustee is authorized to so deliver the same upon the substitution thereof of other bonds of equal value, upon the written consent of the said board of education, Mogadore Village, Ohio.

The condition of this obligation is that the said board of education has designated the said The Mogadore Savings Bank as a depository of school funds deposited by the board of education, Mogadore Village, Mogadore, Ohio, and to pay thereof interest at the rate of 3.50 percent, per annum on the average daily balances.

(Bond from Mogadore Savings Bank to the Mogadore Village Schools).

NOW, THEREFORE, if the said The Mogadore Savings Bank of Mogadore, Ohio, shall during the term of this bond faithfully account for under the due and ordinary course of business, pay over on legal demand all moneys deposited with said bank by or on behalf of said board of education, abide by and conform to all the laws of the State of Ohio, and the terms of the legislation of said board of education, establishing depositories now in force and abide by the terms of the board under which said bank was designated a depository, then this obligation is void, otherwise to remain in full force and effect and virtue in law.

IN TESTIMONY WHEREOF The Mogadore Savings Bank hereto affixes its signature by its proper officers duly authorized to execute this agreement, this 25th day of January, 1928.

In the Presence of THE MOGADORE SAVINGS BANK,

----- (Seal Affixed) -----
----- President -----
----- Treasurer -----

May 21, 1928. A true copy.
The First Trust & Savings Bank,

By-----
Asst. Trust Officer.”

The above instrument is signed by the Mogadore Savings Bank, by its president and treasurer. The corporate seal of the bank is affixed thereto and it is subscribed with the names of two persons in whose presence it purports to have been executed.

With your communication you enclose a copy of another written instrument purporting to be a designation by The Mogadore Savings Bank, of The Akron Trust & Savings Bank of Akron, Summit County, Ohio, as trustee for receiving and holding certain securities which The Mogadore Savings Bank tenders as security for the funds of the Mogadore Village School District which it might receive on deposit. This instrument, after reciting the facts of the corporate existence and location of The Mogadore Savings Bank, its agreement to pay interest on deposits of funds of the Mogadore Village School District, and to safely keep said funds, and save the school district harmless from any loss of deposits made with it, recites further as follows :

"NOW, THEREFORE, said The Mogadore Savings Bank hereby agrees to indemnify said board of education, Mogadore Village School District, and save them harmless from any loss, damage or expense which they may suffer by reason of the loss of any money or moneys so deposited by said board of education in said bank, or for failure on the part of said bank to safely keep said moneys and to pay the same out on the warrant or authorization of said board of education, and as security for said agreement to so indemnify and save harmless said board of education, said The Mogadore Savings Bank hereby grants, bargains, conveys, transfers, assigns and delivers to The First Trust & Savings Bank of Akron, Ohio, as trustee, and its successors, all and singular, the following bonds being of the face value of twenty thousand dollars, (\$20,000.00), and described as follows :

\$15,000.00 U. S. Government notes ; \$5,000.00 U. S. Liberty Loan Bonds in trust nevertheless and to and for the trust, uses and purposes, and subject to the terms and conditions following :

FIRST: Said trustee shall collect and receive any and all interest hereafter accruing upon said bonds and any of them, and shall pay and deliver said income from said bonds to said The Mogadore Savings Bank but said trustee shall hold for purposes set forth said bonds above described.

SECOND: In the event said The Mogadore Savings Bank shall desire or request the delivery to it by the trustee of any of the above mentioned securities, said trustee is so authorized to deliver the same upon the substitution therefor by said The Mogadore Savings Bank of other bonds of equal face value, upon the written consent of said board of education ; PROVIDED, HOWEVER, that the said The Mogadore Savings Bank will have the privilege of substituting or exchanging other U. S. Government Bonds or Notes for the ones described above with the understanding that there shall at no time be less than twenty thousand dollars of U. S. Government bonds or notes held.

THIRD: In the event said The Mogadore Savings Bank shall make default in anything herein, or shall fail to indemnify said board of education for any loss occurring to them, as above mentioned, then and in such event the trustee shall upon the request in writing of said board of education, proceed to sell sufficient of said bonds so held by it as trustee, to satisfy said loss of said board of education after advertising notice of said sale for not less than once a week for three weeks in one or more daily newspapers published in the City of Akron, Ohio, and shall apply the proceeds of such sale to the payment of any loss so sustained by said board of education."

The provisions of law relating to the deposit of school funds, are found in Sections 7604 et seq., of the General Code. Section 7605, General Code, provides for the security to be given by banks designated as depositories in school districts containing two or more banks; Section 7607, General Code, provides for the security to be given by banks designated as depositories in school districts containing less than two banks. The pertinent portions of these two sections which are alike in this respect, as amended in 1927, (112 O. L. 197), read as follows:

Sec. 7605. " * * * Such bank or banks shall give a good and sufficient bond, or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of the State of Ohio, or county, municipal, township or school bonds issued by the authority of the State of Ohio, or notes issued under authority of law by any county, township, school district, road district or municipal corporation of this state, 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. * * * "

It will be observed that the language above quoted is somewhat ambiguous. This language was construed in Opinion No. 1222 rendered by me under date of October 31, 1927, and it was therein held:

"When a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education, secure the deposits of public funds by the giving of a good and sufficient bond, or the deposit of the classes of securities enumerated in Sections 7605 and 7607, General Code, as amended by the 87th General Assembly."

A question similar to the one contained in your present inquiry was considered by me in Opinion No. 581, addressed to your Bureau under date of June 7, 1927. In that case a certain bank which had been selected as the depository for school funds desired to deposit bonds as security for said funds. It did not desire to deposit the bonds with the board of education, and therefore made an arrangement with another bank to hold the bonds subject to the provisions of law relating to the deposits of bonds or notes as security for deposits of funds made with duly designated depositories of public funds. The bank holding the bonds executed a receipt therefor in duplicate, one for the bank which owned the hypothecated securities and the other for the school district whose funds were to be secured. This arrangement was assented to by the board of education. Upon consideration of whether or not such an arrangement provided proper security for the school funds of the district it was held in the aforesaid opinion that the board of education had not provided proper protection for the funds of the school district. In the course of the opinion it was said:

"You will note that the statute states the securities are to be 'deposited' but it does not state with whom the deposit is to be made. It of course follows, however, that the deposit should be with the board of education whose money is secured thereby. The statute is silent as to the care or disposition of the security so deposited. * * * "

Since the provision of Section 7605 is that these securities shall be deposited and the inference is plain that the deposit shall be made with the board

of education, it is clear that there should be an actual delivery of the securities into the custody of the board. This is necessary in order that the security may be available at once upon default in payment of the funds deposited with the depository bank. * * *

* * * The hypothecated securities should be in the exclusive control or dominion of the board of education and available without the concurrence of any one else for the purpose for which the deposit was made. For this reason, I am of the opinion that the funds of the board of education in the case which you present are not properly protected by the delivery of the securities to another bank and their receipt in the manner set forth.

This conclusion should not be construed as indicating the impropriety of placing the hypothecated securities in some safe and proper place. I think it would be entirely proper for the board to keep these securities in a safety deposit box or deposit them with some safe institution. It would appear that under such circumstances the duty of the board to provide properly for the safe keeping of these securities had been properly discharged. This would however be a question of fact in each instance and it is unnecessary and improper to lay down any general rule as to liability. Any such arrangement, however consummated, should reserve the exclusive control and dominion over the hypothecated securities in the board of education. It is the lack of this essential element in the case which you present which forces me to the conclusion that the arrangement is improper."

The fact that in the instant case the bank with whom the securities are deposited is designated as a trustee, whereas under the circumstances considered in my former opinion it was a mere bailee, does not in my opinion change the situation. In neither situation do the bonds at any time come into the actual physical possession of the board of education, nor does the board have exclusive control and dominion over the hypothecated securities.

In a former opinion of this department, Opinions of the Attorney General for 1921, page 745, it was held :

"Under the provisions of Sections 7604, to and inclusive of 7608, G. C., providing for the deposit of school district funds, the respective boards of education are chargeable with the duty of providing for the safe keeping of the securities hypothecated by depository banks, to secure the deposit of funds of the school district."

Clearly, if a board of education is to be held responsible for the safe-keeping of the securities deposited by depository banks, it should have either actual or constructive possession of the securities. By constructive possession, I mean that the securities should be under the control and dominion of the board of education in such a manner that they might at any time take actual physical possession of them without the consent and approval of any third intervening parties.

If a third party is to be made custodian of the securities it should be at the instance, and upon the responsibility of the board of education and subject to revocation at any time by the board of education. Under the arrangement about which you inquire the Mogadore Board of Education does not have either actual or constructive possession of the hypothecated securities or the right to dispose of them in case of default by the depository bank, although under the law it is responsible for their safe-keeping.

The fact that in this particular instance, the bank which had been designated by the depository bank as trustee for the holding of the securities, and their disposition

in case of default, is a responsible banking institution under the supervision of the Superintendent of Banks of the State of Ohio, cannot change the law that the board of education is responsible for the hypothecated securities, and for the protection of the school funds of the school district must at all times have these hypothecated securities under its exclusive control and dominion.

I am therefore of the opinion that school depository banks which at the instance of the board of education whose funds they receive on deposit, are permitted to furnish security for said funds by the hypothecation of certain securities may not designate another bank as trustee for the holding and disposal in case of default of the securities so hypothecated, but must place them under the complete and exclusive control and dominion of the board of education whose deposits are to be thus secured.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2224.

SENTENCE—PRISONER OF OHIO STATE REFORMATORY—NO SUSPENSION BY TRIAL COURT AFTER TERM OF PRONOUNCEMENT—RELEASE BY EXECUTIVE CLEMENCY OR PAROLE.

SYLLABUS:

1. *Courts do not possess inherent power to suspend the execution of sentences imposed in criminal cases, except to stay the sentences for a time after conviction for the purpose of giving an opportunity for a motion for a new trial or in arrest of judgment or during the pendency of a proceeding in error, or to afford time for executive clemency.*

2. *In the enactment of statutory provision dealing with the suspension of sentences in criminal cases, it will be presumed that the Legislature has exhausted the legislative intent in that respect and that it has not intended the practice to be followed in such cases to be extended further than the plain import of the statutory provisions.*

3. *Where a person convicted of operating a motor vehicle without the owner's consent is sentenced to the Ohio State Reformatory and such sentence has been carried into execution and the defendant has served a substantial portion of such sentence, a trial court is without authority, at a subsequent term of court than at which such prisoner was sentenced, to grant a new trial and order the return of such prisoner in order to permit such trial court to place such prisoner on probation.*

COLUMBUS, OHIO, June 11, 1928.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter dated June 6, 1928, which reads as follows:

“We are just in receipt of a letter from the Superintendent of the Ohio State Reformatory, which reads in part as follows:

‘Mike Lorenzo, No. 21404, was indicted at the September term, 1927, of the grand jury of Cuyahoga County for auto stealing W. C. He later plead guilty and was sentenced to this institution, being received here November 11,