

ington-County School District created a new school district under Section 4736, General Code, composed of what was theretofore Salem Village School District, Liberty Rural School District and a part of Fearing Rural School District, the new district thus created being named the Salem-Liberty Rural School District. On April 11, 1930, the members of the board of education of this newly created district were appointed by the county board of education.

It appears from the foregoing that the Salem Village School District, as such, was abolished prior to the date the above bonds were authorized, and under these circumstances, I am of the opinion that the authorization of this issue on April 14, 1930, by a board of education which had prior to that date ceased to exist, is invalid. Even if these bonds had been authorized by the board of education of the Salem Village School District prior to abolition but not issued until subsequent to such date, a serious question as to the authority of the board of education of the Salem-Liberty Rural School District issuing such bonds might still be raised. I accordingly advise you not to purchase these bonds.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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2162.

APPROVAL, BONDS OF VILLAGE OF NORTH OLMSTED, CUYAHOGA COUNTY, OHIO—\$10,251.22.

COLUMBUS, OHIO, July 25, 1930.

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

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2163.

DEPOSITORY—FOR RESERVE FUNDS OF MUNICIPAL SINKING FUND TRUSTEES—SURETY BONDS FOR SECURITY MUST BE TWENTY PER CENT IN EXCESS OF MAXIMUM AMOUNT DEPOSITED.

**SYLLABUS:**

*Where a surety executes a bond under the provisions of Section 4515 of the General Code the same must be for a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited by the sinking fund trustees.*

COLUMBUS, OHIO, July 26, 1930.

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

GENTLEMEN:—Your recent communication reads:

“Section 4515 G. C., reads:—

‘At least once every three years the trustees of the sinking fund shall advertise for proposals for the deposit of all sums held in reserve and shall

deposit such reserve in the bank or banks, incorporated under the laws of this state or of the United States, situated within the county, which offer, at competitive bidding, the highest rate of interest and best security and accommodation and give a good and sufficient bond issued by a surety company authorized to do business in this state, or furnish good and sufficient surety in a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited. There shall not be deposited in any one bank an amount in excess of the paid-in capital stock and surplus of such bank, or to exceed in amount four hundred thousand dollars except when such moneys are deposited for the purpose of meeting the payment of some obligation.'

Question. Must the amount of surety bonds given by a depository as security for the funds under the control of the sinking fund trustees, be 20% in excess of the maximum amount to be deposited?"

I have not been able to find a judicial interpretation of the section which you quote. The question presented, of course, is whether or not the phrase "in a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited" modifies both kinds of sureties mentioned in said section. In view of the punctuation of this sentence of which the phrase is a part it could logically be argued that it does not modify surety company, referred to in the sentence, but only has application to the good and sufficient surety referred to following the conjunction "or" which follows the phrase relating to the surety company.

However, the intention of the Legislature is the controlling factor in interpreting a statute. One of the essential elements necessary in the execution of a bond is to have a definite sum for which the parties bound are answerable in case of default. If the phrase hereinbefore referred to does not apply to the bond executed by a surety company under the provisions of said section then there is no amount fixed for such surety bond. It is believed that such a construction is not tenable. On the other hand, the common sense analysis of the section would require the phrase under consideration to apply to both of the sureties mentioned. In other words, it is the intent of said section that the bond offered by the depository shall be either a surety bond in a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited or other good and sufficient surety in the same sum.

In specific answer to your inquiry, it is my opinion that where a surety executes a bond under the provisions of Section 4515 of the General Code the same must be for a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited by the sinking fund trustees.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2164.

APPROVAL, BONDS OF VILLAGE OF OTTAWA HILLS, LUCAS COUNTY,  
OHIO—\$27,083.59.

COLUMBUS, OHIO, July 26, 1930.

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