

It should be stated that Section 6064-18, has again been amended since its amendment in Substitute Senate Bill No. 2, namely, in House Bill No. 583, passed by the 91st General Assembly at its first special session on December 19, 1935, and approved by the Governor on December 23, 1935. In this amendment the only change made was the broadening of the conditions for which permit bonds shall be given. The portion of the statute, namely, the first sentence thereof not requiring a bond of class C-1, class C-2 and class D-1 permit applicants, however, was not changed, and therefore the amendment has no application in so far as your question is concerned.

In view of the foregoing, I am of the opinion that the bonds involved in your communication, not being based on a valuable consideration, were not good voluntary and common law bonds, and hence are not enforceable legal obligations. Such being the case, it follows that your commission, having such bonds on file in your office, should return them to the obligors giving such bonds.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5132.

PUBLIC FUNDS—TOWNSHIPS AND VILLAGES UNAUTHORIZED TO PURCHASE BURGLARY OR ROBBERY INSURANCE TO PROTECT SECURITIES, ETC.—O. A. G. 1938, VOL. 3, P. 1933, DISCUSSED AND FOLLOWED.

SYLLABUS:

Townships and villages are unauthorized to expend public funds for burglary or robbery insurance to protect securities hypothecated to a township or village by a bank to guarantee deposits of public funds. Opinions of the Attorney General for 1928, Volume 3, p. 1933, discussed and followed.

COLUMBUS, OHIO, February 1, 1936.

HON. RUSSELL V. MAXWELL, *Prosecuting Attorney, Bryan, Ohio.*

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

“Several inquiries have come to this office from the township trustees and village officials relative to the insuring of securities hypothecated to a village or township by a bank to guarantee deposit of public funds.

The inquiry is as to whether the township or village may purchase burglary or robbery insurance on this collateral security and pay the premiums for the same out of public funds. The trustees and village officials do not have any place for the safe keeping of these securities and sometimes they are placed in a safety deposit box of the bank which has the public funds upon deposit, but the bank does not have access to the safety deposit boxes. The banks have some robbery and burglary insurance on these safety deposit boxes but it is entirely inadequate.

If you have heretofore rendered an opinion concerning this matter I would like to have you send me a copy of the same, or if not, will you please render an opinion concerning the right of village or township officials to spend public funds for premiums on burglary or robbery insurance policies purchased for the purpose of protecting securities hypothecated to a village or township by a bank to guarantee deposits of public funds?"

Sections 3320, et seq., General Code, provide for the depositing of township funds. Sections 4295, et seq., General Code, provide for the depositing of municipal funds. Nowhere in these sections is there any authority for taking out the insurance mentioned in your request. It is fundamental that public officers have only such powers as are expressly given to them by statute and such implied powers as are necessary to effectuate the express powers. *Peter v. Parkinson*, 83 O. S. 36 at 49; *Elder v. Smith*, 103 O. S. 369. In the expenditure of public funds, all doubt as to the existence of such power is resolved against the expenditure. See *Jones v. Commissioners*, 57 O. S. 189.

In previous opinions of this office and prior to the enactment of Section 2638-1, General Code, expressly authorizing such insurance, this office has taken the position that boards of county commissioners, the powers of which are limited by statute, could not legally provide for insurance against loss of funds and securities in the custody of the county treasurer or other county officer, by reason of burglary or robbery. See Opinions of the Attorney General for 1927, pages 874, 916 and 2160. The conclusion of the Attorney General, as set forth in these opinions, was based on the fact that the legislature had provided for protecting the county against losses of that nature by requiring the county officers to give a bond which fully protected the county and that, inasmuch as the legislature had so provided, it was not within the powers of the commissioners to provide different or other protection. However, the legislature in 1929 enacted Section 2638-1, General Code. This section reads as follows:

"Upon request of the county treasurer of any county, the county commissioners of such county may authorize the county

treasurer to procure insurance against any loss of public funds or securities, in the custody of the county treasurer, by burglary or robbery. The amount of insurance to be procured shall be in such sum as may be agreed upon by the county treasurer and the county commissioners. All costs of such insurance shall be paid by the county as provided in G. C. section 2460."

However, the legislature has not seen fit to pass similar legislation with reference to townships and villages. It would therefore, logically seem to follow that no authority exists for taking out the insurance mentioned in your letter. The conclusion herein reached is supported by an opinion to be found in the Opinions of the Attorney General for 1928, Volume 3, p. 1933, wherein the exact question presented by you was passed upon by the then Attorney General. The syllabus of that opinion reads as follows:

"1. Where securities deposited with the state treasurer under Section 710-150 of the General Code and Section 330-3 of the Code are lost through burglary, holdup, theft or otherwise, the state is not liable, but such liability will extend against the treasurer personally and the sureties on his official bond irrespective of any question of negligence in connection with such loss.

2. Where securities deposited with county, township, village, city or school district treasurers to secure the deposit of the funds of such subdivision are lost through burglary, holdup, embezzlement or other wrongful conversion the treasurers of such subdivisions and their sureties are liable irrespective of negligence in connection with such loss. In such cases the subdivisions themselves would only be liable in the event of negligence in the custody of such securities.

3. There exists no statutory authority to expend public funds for the insurance of either the public or the treasurers personally against liability for the loss of securities deposited with such officers, but such officers may personally from private funds effect such insurance.

4. The treasurer of state has no statutory authority officially to set up an insurance fund to provide burglary, robbery and embezzlement insurance, the cost of which is to be divided pro-rata among the institutions depositing securities with such treasurer; but such an arrangement may be effected by voluntary arrangement between such institutions and the treasurer acting as an individual."

An examination of the above 1928 opinion, as well as of the reasoning upon which it is based, leads me to re-affirm the conclusion reached in that opinion. In reaching this conclusion, I am aware of the opinion to be found in Opinions of the Attorney General for 1934, Volume III, page 1915, wherein it was held that a board of education might lawfully protect itself by effecting burglary or robbery insurance on funds in the hands of the director of a cafeteria which had been established by the board of education. However, that opinion is clearly distinguishable in that there was no other way the board of education could protect itself, since it could not require a bond from the director of the cafeteria. In the present situation the subdivisions might protect themselves by requiring the officers in charge of these funds to give adequate bond.

In view of the above, and without prolonging this discussion, it is my opinion in specific answer to your inquiry, that townships and villages are unauthorized to expend public funds for burglary or robbery insurance to protect securities hypothecated to a township or village by a bank to guarantee deposits of public funds. Opinions of the Attorney General for 1928, Volume III, page 1933, discussed and followed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5133.

APPROVAL—BONDS OF VILLAGE OF WILLOWICK, LAKE COUNTY, OHIO, \$9,000.00

COLUMBUS, OHIO, February 1, 1936.

Industrial Commission of Ohio, Columbus, Ohio.

5134.

APPROVAL—BONDS OF CITY OF TOLEDO, LUCAS COUNTY, OHIO, \$10,000.00.

COLUMBUS, OHIO, February 1, 1936.

State Employees Retirement Board, Columbus, Ohio.