

4053.

APPROVAL, NOTES OF NORTHFIELD VILLAGE SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, February 11, 1932.

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

4054.

TREASURER OF STATE—PUBLIC FUNDS—UNAUTHORIZED TO EXPEND SUCH FOR FORGERY INSURANCE.

SYLLABUS:

No statutory authority exists for the expenditure of public funds for the insurance of either the public or the Treasurer of State by reason of loss arising from the payment of public funds by reason of forged, raised or altered warrants.

COLUMBUS, OHIO, February 15, 1932.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter enclosing copy of Depositors Forgery Bond purporting to insure the State of Ohio and various state officials against loss by reason of forgery or alteration of state warrants. An examination of this bond raises the following questions:

- (1) Is there authority for the purchase of this type of bond, or, in other words, may state funds be expended for such purpose?
- (2) If such authority exists, is such bond in proper form and executed in a proper manner so that it will accomplish the purpose for which it is intended?

The various state offices are created by statute and the officials holding such offices necessarily have only such powers as are expressly granted by statute or which are necessarily inferred from the language of the statute. It therefore becomes necessary to examine the statutes in order to determine whether the legislature has authorized the procuring of a bond indemnifying the state in the manner set forth in the enclosed bond.

In an opinion of one of my predecessors (Opinions of the Attorney General for 1923, page 489) it was held that there was no statutory authority for procuring burglary insurance for the office of clerk of courts and that the county auditor could not legally pay the premiums thereon.

On May 24, 1927 (Opinions of the Attorney General for 1927, page 874) my predecessor in office held as stated in the syllabus:

“County commissioners have no authority to purchase and pay for burglary or hold-up insurance for the county treasurer or for any other

county officer, nor have they authority to pay for insurance against forgery for the county treasurer."

In this opinion the then Attorney General points out that since county treasurers are by virtue of the provisions of the statute insurers of the funds coming into their hands, the bond of such county treasurer protects county funds and that should any loss occur by reason of the payment out of county funds by reason of forged signatures, the county would be protected by the county treasurer's bond and by reason thereof the benefit to accrue from a bond insuring against burglary or forgery would accrue not to the county, but to the obligors on the county treasurer's bond, that is, on the county treasurer and his bondsmen.

On May 17, 1928 (Opinions of the Attorney General for 1928, page 1933), my predecessor affirmed his former ruling and extended it to public treasurers, whether of state, county or municipality. This opinion is lengthy and well reasoned. I therefore merely quote the third and fourth branches of the syllabus:

"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."

(See also Opinions of the Attorney General for 1928, page 373.)

While these former opinions deal in the main with the right of county and city officials to procure insurance against burglary and forgery, the reasoning therein by analogy would lead to a like conclusion concerning state officials unless the legislature has, by statute, given to state officials greater power than it has to county and municipal authorities.

Section 301 of the General Code, in so far as material, reads:

"No money shall be paid out of the state treasury, * * except on the warrant of the auditor of state. * *"

Section 243 of the General Code, pertaining to the powers and duties of the Auditor of State, reads as follows:

"The auditor of state shall examine each voucher presented to him, or claim for salary of an officer or employe of the state, or per diem and transportation of the commands of the national guard, or sundry claim allowed and appropriated for by the general assembly, and if he finds it to be a valid claim against the state and legally due, and that there is money in the state treasury duly appropriated to pay it and that all requirements of law have been complied with, he shall issue thereon a warrant on the treasurer of state for the amount found due, and file and preserve the invoice in his office. He shall draw no warrant on the

treasurer of state for any claim unless he finds it legal, and that there is money in the treasury which has been duly appropriated to pay it."

An examination of the appropriation act enacted by the last legislature discloses no specific appropriation for forgery bonds nor do I find any specific provision in the General Code authorizing any state official to contract for insurance against loss of public funds by reason of forgery. I do, however, find that the legislature has made specific provisions authorizing the Treasurer of State to receive certain bonds from depositories as security for public funds deposited.

The legislature has required that the Treasurer of State shall give certain bonds to the State of Ohio, Sections 297 and 298, General Code, providing that he shall give a bond for the faithful performance of the duties of his office and make provision for increasing this bond when circumstances warrant such increase. Section 1195-1 of the General Code, provides that the Treasurer of State shall give a bond as custodian of the different highway funds received and held by him. Section 6309, of the General Code, provides for the giving of a bond as security for motor vehicle registration fees received into the custody of the Treasurer.

It therefore appears to me that, inasmuch as the legislature has required a bond for the protection of the state against loss of moneys received by the State Treasurer, which bond must be in the sum of \$500,000, and has made provision for increasing such bond when circumstances make such increase advisable (Sections 297 and 298, General Code); and, has further required additional bonds from the Treasurer of State when he receives other funds in his capacity; and, especially since the legislature has made the Treasurer of State personally liable for the repayment of funds received by him, the state may hold the Treasurer of State and the sureties on his bond liable for any loss that might occur by reason of the payment out of state funds wrongfully, whether by virtue of a forged warrant or otherwise. This being true, the benefit of a forgery bond in the event of the extraction of public moneys from the state treasury by reason of a forged or raised warrant would be received by the Treasurer of State and his bondsmen rather than by the State of Ohio.

I am therefore at a loss as to what consideration would exist for the issuance of such policy since the state is already insured against such loss by reason of the bond given by the State Treasurer.

I am therefore of the opinion that no statutory authority exists for the expenditure of public funds for the insurance of either the public or the Treasurer of State by reason of loss arising from the payment of public funds by reason of forged, raised or altered warrants.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4055.

APPROVAL, NOTES OF COVENTRY TOWNSHIP RURAL SCHOOL
DISTRICT, SUMMIT COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, February 15, 1932.

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