2731.

NATIONAL BANK—AS DEPOSITORY FOR POLITICAL SUBDIVISIONS WITHIN STATE AUTHORIZED TO PLEDGE ASSETS AS SECURITY FOR SUCH FUNDS.

SYLLABUS:

1. *A national bank, designated as a depository for state, county, township, municipal or school funds, under the depository statutes of this state, is authorized to pledge assets of the classes enumerated in the applicable provisions of statute, as security for such funds.*

2. *Upon default by such depository bank, the public depositor would be entitled to resort to the assets so pledged.*

COLUMBUS, OHIO, May 24, 1934.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—I have your letter of recent date, which reads as follows:

> "With reference to your opinion Number 2542, issued April 21, 1934, if a National Bank should pledge mortgages or other assets as security for county, township or school board funds, would such a pledge be legal, and the political subdivision entitled to such security upon default by the depository. I am enclosing herewith for your information a bulletin issued by the Ohio Bankers Association."

In Opinion No. 2542, referred to in your letter, I reached the conclusion that national banks have the power to pledge assets to secure lawful deposits of state, county, municipal and school funds. The reasoning to support that conclusion was stated thus in the opinion:

> "Prior to the Act of June 25, 1930, c. 604, 46 Stat. 809, amending Section 45 of the National Bank Act of 1864 (R. S. 5336; 12 U. S. C., Sec. 24, Seventh), a national bank could not legally pledge assets to secure funds of a state or a political subdivision thereof. *City of Marion, Illinois,* vs. *Sneeden, Receiver,* 54 S. Ct. 421, 78 L. Ed. 521.; *The Texas & Pacific Ry. Co.* vs. *Pottorff,* 54 S. Ct. 416, 78 L. Ed. 514. The amendment in question permits a national bank to give security 'of the same kind as is authorized by the law of the state in which such association is located in the case of other banking institutions in the state.' Whether or not a national bank located in Ohio can pledge its assets to secure the funds in question thus rests upon the power of banks organized under the laws of this state to make such pledge. Upon examination I find no statute of Ohio, expressly authorizing banks to pledge assets as security for public deposits. However, it has been held that such power may be implied from a legislative enactment requiring public officers to receive a pledge of securities. *First American Bank & Trust Co.* vs. *Palm Beach.* 96 Fla. 247, 117 So. 900, 65 A. L. R. 1398.
>
> Section 330-3, General Code, authorizes the state to accept collateral as therein enumerated to secure the deposit of state funds. Sections 2732

and 4295, respectively, are similar provisions in regard to county and municipal funds. Sections 7605 and 7607 contain similar authorization in respect to school funds. As to funds covered by these sections and by similar provisions, it is clear that a state bank, *a fortiori* a national bank, has power to pledge assets of the classes therein enumerated as security."

It follows from the fact that national banks are authorized to pledge assets of the types enumerated in the respective depository statutes, *supra,* to secure state, county, municipal and school funds, that upon default by a national bank lawfully acting as depository, the public depositor could resort to such security.

The authority of a national bank to pledge assets to secure the deposit of township funds remains to be considered. The township depository statute is contained in Sections 3320 to 3326, inclusive, General Code.

Section 3324, General Code, reads:

"Such bank or banks shall give good and sufficient bond to the approval of the township trustees in a sum at least equal to the amount deposited for the safe custody of such funds, and the trustees of the township shall see that a greater sum than that contained in the bond is not deposited in such bank or banks, and such trustees and their bondsmen shall be liable for any loss occasioned by deposits in excess of such bonds."

Section 3320 contains similar language. It should be noted that under these two sections the only security provided is a depository bond. Depository statutes referred to above, applicable to the state and certain subdivisions, specifically provide for the acceptance of assets of the types enumerated by way of pledge.

It is clear, where under the state law the only security provided for public funds is a surety bond, that a national bank cannot pledge its assets as security in lieu of such bond. Furthermore, if the bank fails, its receiver can recover the assets thus illegally pledged. *City of Marion* vs. *Sneeden,* 54 S. Ct. 421. The Supreme Court of the United States in that case had before it a statute of Illinois, which, like Section 3324, General Code, authorized only the giving of a surety bond. The court could find no decision of the Supreme Court of Illinois construing that statute. The Supreme Court of the United States then construed the statute as not authorizing the pledge of assets and allowed the receiver to recover the securities.

While Section 3324, General Code, standing alone, is analogous to the Illinois statute, there was no statutory provision of Illinois comparable to certain other provisions of statute in this state.

Section 4295, General Code, reads:

"The council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, or furnish good and sufficient surety, or secure said moneys by a deposit of bonds 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; and 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; bonds of the state of Ohio or of any other state of the United States; legally issued bonds of any city, village, county, township or other political subdivision of this or any other state or territory of the United States and as to which there has been no default of principal, interest or coupons, and which in the opinion of the treasurer are good and collectible providing the issuing body politic has not defaulted at any time since the year 1900, in the payment of the principal and interest of any of its bonds; notes issued under authority of law by any county, township, school district, road district, or municipal corporation of this state; said security to be subject to the approval of the proper municipal officers, in a sum not less than ten per cent in excess of the maximum amount at any time to be deposited. *And whenever any of the funds of any of the political subdivisions of the state shall be deposited under any of the depository laws of the state, the security herein mentioned, in addition to other securities as are prescribed by law, may be accepted to secure such deposits.*" (Italics the writer's.)

This section has been considered in Opinions of two former Attorneys General. The syllabus of an opinion, reported in Opinions of the Attorney General, 1928, Vol. I, p. 108, reads:

"Township trustees may accept from a depository of township funds in lieu of a depository bond the securities enumerated in Section 4295 of the General Code, subject to the conditions and limitations in said section contained."

This opinion was approved in a subsequent opinion, reported in Opinions of the Attorney General, 1932, Vol. I, p. 229, the syllabus of which reads as follows:

"Township trustees may accept from depositories of township funds and depository banks may deposit in lieu of the bond required by Section 3324 of the General Code, the securities mentioned in Sections 4295 and 2288-1, General Code, therein imposed. (Opinions of the Attorney General, 1928, page 108, approved and followed.)"

Section 2288-1, General Code, referred to in this syllabus, authorizes the acceptance of first mortgages "in addition to the undertakings or securities provided for in Sections 2232, 4295, 7605 and 7607 * * *."

In the 1932 opinion, *supra,* my predecessor, after quoting Section 4295, General Code, said at page 232:

"This section was enacted and became effective on August 1, 1927. It is to be noted that at the beginning of the section it has reference to councils of cities and villages. The language of the last sentence, however, is unambiguous, and provides that such section shall apply to the funds of any political subdivision.

It is a well established rule of statutory construction as stated in Lewis' Sutherland Statutory Construction, Vol. 2, page 705:

'One who contends that a section of an act must not be read literally must be able to show one of two things: either that there is some other section which cuts down or expands its meaning, or else that the section itself is repugnant to the general purview. The question for the courts is, what did the legislature really intend to direct; and this intention must be sought in the whole of the act, taken together, and other acts in pari materia.'

I find no section of the act (112 O. L. 193) of which Section 4295, General Code, was a part, nor in any other section of the Code, a provision limiting the language of this section.

It is a familiar rule of interpretation of statutes that effect must be given to all of the language of a statute whenever possible and unless such Section 4295, General Code, has reference to other political subdivisions than cities or villages, the entire last sentence is redundant.

Sections 2288-1, 3324 and 4295, General Code, are in pari materia, and should be construed together in order to determine the legislative intent. When reading them together, there is no ambiguity and a clear intention of the legislature is shown with reference to the securing of deposits of township funds."

After referring to the 1928 opinion, *supra,* my predecessor continued:

"The conclusion reached in this opinion is apparently the logical conclusion to be arrived at by reason of the language contained in the section of the statute therein referred to. If such conclusion is the correct interpretation of Section 4295 of the Code, it would follow that the language contained in Section 2288-1, supra, merely enlarges the terms of the sections enumerated in said statute. Section 2288-1, General Code, by the use of the language 'In addition to the undertakings or security provided in Sections * * 4295 * * it shall be lawful to accept first mortgages' purports to enlarge the types of securities that may be given to secure the deposit of public funds and not restrict them. In other words, the effect of Section 2288-1 is the same as though the types of securities mentioned therein were described and included in the provisions of Sections 2732, 4295, 7605 and 7607, of the General Code."

I concur both in the reasoning and result of these former opinions of this office.

Specifically answering your inquiry, it is my opinion that:

1. A national bank, designated as a depository for state, county, township, municipal or school funds, under the depository statutes of this state, is authorized to pledge assets of the classes enumerated in the applicable provisions of statute, as security for such funds.

2. Upon default by such depository bank the public depositor would be entitled to resort to the assets so pledged.

Respectfully,
JOHN W. BRICKER,
Attorney General.