

2656.

TOWNSHIP TRUSTEES—LIABILITY WHEN DEPOSITORY AGREEMENT HAS EXPIRED AND DEPOSITS REMAIN IN BANK SUBSEQUENTLY BECOMING INSOLVENT.

SYLLABUS:

When a board of township trustees permits funds to remain in a former depository bank after the expiration of the term of the depository agreement, and if, during the time when such funds are so on deposit after the termination of such agreement such bank is taken over by the superintendent of banks for liquidation by reason of its insolvency, and loss to the township is suffered thereby, such township trustees and their bondsmen are liable to the township to the extent of such loss. (Section 3326, General Code.)

COLUMBUS, OHIO, May 12, 1934.

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

GENTLEMEN:—Your request for my opinion, reads as follows:

“Sections 3320 et seq., of the General Code, refer to the creation of a depository for township funds and requires such deposits to be secured by a bond. Section 3322 contains this provision: ‘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.’

In this case, the trustees of the township legally established a depository and took a proper bond for a specific period, ending on a day certain. The bond was not renewed at its expiration, and thirty-six hours after the expiration time of the bond the bank closed.

Question: Are the trustees and their bondsmen liable under the provisions of Section 3322 or any other section of the law for the amount of the loss occasioned by the failure of the bank?”

From your inquiry, it is evident that the depository contract in question was entered into prior to the amendment of the township depository laws by the legislature at its present session. By reason of such fact, the sections of the statute as then in existence must determine whether or not such liability exists. Section 3321, General Code, provides that township depository contracts shall be for a term not to exceed two years. Section 3326, General Code, which defines the liabilities of township trustees and their bondsmen, reads:

“When such depository is provided and the funds are deposited therein as herein directed, the trustees of the township and their bondsmen shall be relieved of any liability occasioned by the failure of the bank or banks of deposit or by the failure of the guaranty company acting as surety for such bank or banks, or by the failure of either of them except as herein provided in cases of excessive deposits. On failure of the trustees of any township to provide a depository according to

law the trustees and their bondsmen shall be liable for any loss occasioned by their failure to provide such depository, and in addition shall pay into the township treasury two per cent on the average daily balance on the township funds during the time said township shall be without a depository. Said moneys may be recovered from the township trustees and their bondsmen for the use and benefit of the township treasury upon the suit of any taxpayer of the township."

The liability of a surety on a bond must be determined from the agreement creating his obligation.

State vs. Griffith, 74 O. S. 80, 92;
Bryant vs. American Bonding Co., 77 O. S. 90, 99;
American Guaranty Co. vs. Clifford Coal & Supply Co., 115 O. S.,
 524, 536;
Roofing Co. vs. Gaspard, 89 O. S. 185.

In construing a statutory bond the statute authorizing, requiring or defining the bond must be read as a part of the contract.

Alexander vs. Jacoby, 23 O. S. 358;
Secrest vs. Barbee & Roston, 17 O. S. 425, 431.

Section 3326, General Code, above quoted, makes two provisions as to the liability of township trustees and their bondsmen with respect to township funds:

First, if the board of township trustees establishes a township depository in the manner provided in Sections 3320 to 3325, General Code, and township money is deposited therein, and thereafter the depository bank fails or the surety company becomes insolvent, neither the township trustees nor their bondsmen are liable for the loss suffered by the township by reason thereof.

Second, if the board of township trustees does not so establish a depository they and their bondsmen are liable for any loss suffered by the township by reason thereof, including two percent on the average daily balance of the funds for which a depository was not so provided.

Section 3324, General Code, as it existed prior to its amendment by House Bill No. 55, of the 2nd Special Session of the 90th General Assembly, read:

"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."

Such section places a definite liability on the township trustees in the event that township moneys are placed in a depository in excess of the depository bond. Section 3322, General Code, as it existed prior to its amendment in such House Bill No. 55, imposed a definite duty on the township

trustees to see that moneys are not deposited in a depository in excess of the depository bond. Such section, in so far as is material to your inquiry, read:

“No bank or depository shall receive a larger deposit of such funds than the amount of such bond and in no event to exceed three hundred thousand dollars. 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.”

It might be urged that no deposits were made in a depository in excess of the bond since at the time the deposits were made a bond was in existence in an amount equal to the amount of such deposits. Assuming such contention to be sound, I am unable to find any provision of law which would authorize such board to permit such funds to be outside of their official custody other than in a depository created pursuant to the statutes above referred to. Such depository agreement having terminated by reason of the terms thereof, the bank would then have to act as an implied trustee or agent for the board of trustees.

The legislature, in Section 3326, General Code, has specifically provided that:

“On failure of the trustees of any township to provide a depository according to law the trustees and their bondsmen shall be liable for any loss occasioned by their failure to provide such depository * * * ”

It is therefore my opinion that when a board of township trustees permits funds to remain in a former depository bank after the expiration of the term of the depository agreement, and if during the time when such funds are so on deposit after the termination of such agreement such bank is taken over by the Superintendent of Banks for liquidation by reason of its insolvency, and loss to the township is suffered thereby, such township trustees and their bondsmen are liable to the township to the extent of such loss. (Section 3326, General Code.)

Respectfully,
JOHN W. BRICKER,
Attorney General.

2657.

MOTOR VEHICLE—PURPOSES OF SWORN STATEMENT OF OWNERSHIP—DUPLICATE BILL OF SALE ACCEPTABLE FOR FILING WITH CLERK OF COURTS WHEN—

SYLLABUS:

1. *Sworn statements of ownership of motor vehicles or used motor vehicles authorized by Section 6310-13, General Code, can serve only one of three purposes,*