

might be placed at interest in the depositories of the state under sections 321 et seq., General Code.

3. If the secretary of state failed to turn into the state treasury the funds so collected by him under said act, in substantial compliance with said act, he is liable to the state for whatever loss may have been suffered by the state due to such failure. The measure of recovery is the amount of loss, if any, suffered by the fund.

The right to so recover is based upon the rule of law that a public office is a public trust, subject to all restrictions and liabilities that obtain against trustees of private trusts, among which is that a trustee for the purposes of investment must use due diligence to keep the funds of the trust invested. The statute prescribes the duties of the public officer and such provision are mandatory, not merely directory.

4. If it be found that the secretary of state has failed to substantially comply with said act in respect to the deposit of such funds with the state treasurer, such failure would constitute a breach of his official bond conditioned for the faithful discharge of the duties of his office, for which the sureties on the official bond would be equally liable with the principal.

5. If banks have received said fees, otherwise than for the purposes of immediate transmission to the secretary of state, with knowledge that they were such state funds, such banks will be liable to the state for whatever profit may have been realized by them from said funds; or, if no profits have been realized, then to the extent of the loss to the state caused by the funds being withheld from deposit in the state treasury, thereby preventing them from being deposited at interest in the state depository.

The right to so recover, as first stated, is based upon the rule of law that all increments to trust funds become a part of the principal and that all persons holding trust funds with knowledge of their character, become liable to account to the beneficiary of the trust for the principal and the profits thereon. The right to so recover, as last stated, is based upon the rule of law that all persons holding trust fund for purposes of investment, with knowledge of their character, become liable to account to the trust fund for loss due to neglect of the trustees to keep the funds invested.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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3446.

APPROVAL, BONDS OF HOWLAND TOWNSHIP, TRUMBULL COUNTY,  
\$41,500.00.

COLUMBUS, OHIO, June 11, 1926.

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