

has done all that could be required of him under the statute. His certificate of appointment appears to be regular on its face, and, in my opinion, that is all that is necessary to entitle him to a commission. Whether or not he can continue to perform the duties of the office of Sheriff is a judicial matter, to be determined by the courts.

In short, it is my opinion that when a person has been elected or appointed and presents to the proper officer a legal certificate of his election or appointment, such officer has no other choice than to issue the commission.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

116.

BOARD OF EDUCATION—DEPOSITORY CONTRACTS, FEDERAL RESERVE MEMBER BANK—CONTRACT PERIOD—COMPLIANCE WITH LAW—CANNOT EXTEND PERIOD, WHEN.

SYLLABUS:

1. *A board of education can enter into a contract with a member bank of the Federal Reserve System for the deposit of school funds for the period of time extending from within thirty days after the first Monday in January to August 23, 1937, after full compliance by the Board of Education and the bank with all the requirements prescribed by Sections 7604 to 7609, inclusive, General Code.*

2. *A board of education and a member bank of the Federal Reserve System cannot extend an already existing contract providing for the deposit of school funds from January 1, 1937, to August 23, 1937.*

COLUMBUS, OHIO, February 9, 1937.

HON. THEODORE TILDEN, *Prosecuting Attorney, Ravenna, Ohio.*

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

"I have had numerous requests from boards of education throughout the county, stating that the new law which is effective August, 1937, forbids the payment of interest on school board funds after that date.

The question arises how the school boards may take advantage of depository interest from January 1, 1937, to August 23, 1937, and whether a contract can be entered into for that period of time or whether a legal extension of the already existing contract can be granted to cover this period of time.

The banks are willing to give written extensions to the boards with which they deal extending the time from January 1 to August 23.

The boards are particularly anxious to have an opinion on this subject so that they can by proper resolution designate the depository for their funds."

The "new law" to which you refer in your letter is 4 U. S. C. A., Title 12, Section 371a 'Payment of interest on demand deposits', and provides as follows:

"No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand: Provided, That nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract entered into in good faith which is in force on the date on which the bank becomes subject to the provisions of this paragraph; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this paragraph, and every member bank shall take such action as may be necessary to conform to this paragraph as soon as possible consistently with its contractual obligations: Provided further, That this paragraph shall not apply to any deposit of such bank which is payable only at an office thereof located outside of the States of the United States and the District of Columbia: Provided further, That until the expiration of two years after the date of enactment of the Banking Act of 1935 this paragraph shall not apply (1) to any deposit made by a savings bank as defined in Section 12B of this Act; as amended (Sec. 264, this title), or by a mutual savings bank, or (2) to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of trust funds is required by State law. So much of existing law as requires the payment of interest with respect to any funds deposited by the United States, by any Territory, District, or possession thereof (includ-

ing the Philippine Islands), or by any public instrumentality, agency, or officer of the foregoing, as is inconsistent with the provisions of this section as amended, is hereby repealed." (Italics, ours.)

The language of the above statute clearly and explicitly sets forth that until August 23, 1937, any member bank of the Federal Reserve System can pay interest on demand deposits of public funds of any state, county, school district or other subdivision upon which interest is required by state law.

I observe that this, in effect, was also the construction given to this statute by my predecessor in office. Opinions of the Attorney General, 1935, Vol. III, page 1694, in which it was held:

"1. By the terms of Section 324(c) of 'The Banking Act of 1935' (Sec. 371a, U. S. C. A.) enacted by Congress, and which was approved by the President and became a law on August 23, 1935, member banks' of the Federal Reserve System are prohibited from, directly or indirectly by any device whatsoever, paying any interest on any deposit of public funds payable on demand, after August 23, 1937, whether the payment of interest on such deposits is required by state law or not."

The question presented is, can a school board enter into a contract or renew an existing contract with a member bank of the Federal Reserve System, for the deposit of its funds for the period of time "within thirty days after the first Monday in January" to August 23, 1937?

The pertinent statutory provisions relating to the selection of a public depository by a school board are Sections 7604 to 7609, inclusive, General Code. The controlling sections of the General Code, for the purpose of this opinion are, in part, as follows:

"Sec. 7604. That within thirty days after the first Monday in January, 1934, and every year or, at the option of the board, every two years thereafter, the board of education of any school district by resolution shall provide for the deposit of any or all money coming into the hands of its treasurer. * *"

"Sec. 7605. In school districts containing two or more banks such deposit shall be made in the bank or banks situated therein, that at competitive bidding offer the highest rate of interest for the full time the funds or any part thereof are on

deposit. * * But no contracts for the deposit of school funds shall be made for a longer period than two years."

"Sec. 7606. The board shall determine in such resolution the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given. All proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity and shall be open at all times to public inspection. * *"

"Sec. 7608. All proceedings connected with the adoption of such resolution and the making of such contract must be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection."

Upon a consideration of the provisions of Sections 7604 and 7605, General Code, it is clear that the statutes do not provide that the contract entered into shall be for any certain length of time. Section 7604, General Code, sets a beginning time for the contract, to wit:

"* * within thirty days after the first Monday in January."

Section 7605, General Code, provides for the ending time for such contract, to wit:

"But no contracts for the deposit of school funds shall be made for a longer period than two years."

There is no language in either statute that can be construed as preventing a contract being entered into for a period of time less than two years. In fact, the language of both Sections 7604 and 7606, supra, is contrary to such a construction. Section 7604 leaves it to the discretion of the board of education to enter into a contract. The language "every year" or "every two years" cannot be construed or changed to mean "for one year" or "for two years." As stated hereinabove, the creation of a depository can be for less than two years. It is therefore only logical to say it can be for less than one year. The following language in Section 7606, General Code:

"The board shall determine * * the time for which such deposits shall be made"

gives the board absolute authority to determine the period of time for which such deposits shall be made.

The language of Sections 7604, 7605 and 7606, *supra*, is clear and not susceptible of any other construction than its plain language imports, that the board is given absolute authority to determine the period of time for which such contracts shall be made subject to the limitation that it shall not be for longer than two years.

Authorities wherein Sections 7604, 7605 and 7606, *supra*, are discussed are very limited. In the case of *In re. Depositories for School Funds*, 2 Abstract 301, it was held:

“Contract with depository for school funds for two years beginning in July, held-not invalid but is limited to period concluding thirty days after first Monday in January in even numbered years. The time mentioned in Section 7604 is not such a mandatory provision that it would prevent the board of education from entering into a contract after the time specified, but the thirty days following the first Monday in January in the even numbered years is a beginning and ending time for such depository contracts.”

A former opinion of this office, *Opinions of the Attorney General*, 1917, Volume I, page 142, held that the statute did not limit the length of time for which the contract could be made further than setting the time for beginning and limiting it to not longer than two years. In this opinion referred to it was said:

“The statute does not say that the contract shall be for any certain length of time, but it does designate the time when the contract for said funds shall be made and that it shall be made for not more than two years * * and I am further of the opinion that said period of thirty days following the first Monday of January, in the even numbered years, is made a beginning and an ending time for such depository contracts.”

A consideration of Sections 3320 and 3321, *General Code*, relating to the selection of a depository by the township trustees discloses that they are almost identical with the statutes relating to selection of a depository by a board of education. These sections read in part, as follows:

“Sec. 3320. That within thirty days after the first Monday of January, 1916, and every two years thereafter, the trustees

of any township shall provide by resolution for the depositing of any or all moneys * *”

“Sec. 3321. The trustees of the township shall determine in such resolution the method by which bids shall be received, the authority which shall receive them, and time for which such deposits shall be made * * But no contract for the deposit of township funds shall be made for a longer period than two years.”

In my opinion, a former opinion rendered by this office, construing Sections 3320 and 3321, supra, is dispositive of the question that a board of education can enter into a depository for any time less than two years. In this last opinion referred to in Opinions of the Attorney General for 1934, Vol I, page 185, it was stated:

“I am of the opinion that the township trustees may enter into a depository contract for a period of less than two years.”

In the body of the opinion it was further stated:

“Upon examination of Sections 3320 and 3321, General Code, together, it would appear that the legislature itself, did not consider that it had, by the enactment of Section 3320, General Code, required the creation of a depository for a specified period of two years, or it would not have considered that it was necessary in the next succeeding section to provide that the contract should be for not more than two years. If Section 3320, General Code, standing alone, is not to be construed as requiring the creation of a depository for a period of two years, no more and no less, it could not be construed as requiring a contract for any definite period. I am inclined to the view that Section 3320, General Code, does not require the creation of a depository for any definite period, yet, by reason of the provisions of Section 3321, General Code, such contract must be for two years or less; that within thirty days after the first Monday of January on the even numbered years, the legislature directs that a depository for township funds be created, if it be possible, that the time designated in such statute is for the orderly and systematic procedure of creating depositories and is therefore directory rather than mandatory. In re. Chagrin Falls, 91 O. S., 308.”

I am of the opinion that a board of education may, by virtue of Sections 7604, 7605 and 7606, supra, enter into a depository contract for a period less than two years. In arriving at this conclusion, I am not unmindful of a recent opinion of my predecessor appearing in Opinions of the Attorney General for 1935, Vol. III, page 1694. This opinion dealt with the question of the authority of boards of county commissioners to contract for the deposit of county funds for a period less than three years. The opinion held: "It clearly follows that such contracts are to be entered into for a period of three years."

The distinction in the time limit for a depository contract for county funds and one for township or board of education funds appears clearly on the reading of Section 2729, General Code, which at the time of rendering this opinion provided in part as follows:

"* * such bank or banks or trust companies *shall become the depository or depositories of the money of the county and remain such for three years* or until the undertaking of its successor or successors is accepted by the commissioners." (Italics ours.)

The language of that statute fixed the period of time "for three years," so specific, definite and certain that it was not susceptible of any other construction. It is noteworthy to observe that after the rendition of this opinion the legislature amended the section to read as follows:

"* * and remain such for three years, unless a shorter period shall have been specified by the commissioners in their notices as advertised or readvertised pursuant to this chapter. * *"

The amendment of this section shows an evident intent on the part of the legislature to give county commissioners that same authority to "determine the period of time for which such deposits shall be made" as the legislature deemed had been given to boards of education in Section 7606, General Code. The only distinction that can be said to exist is that boards of education are limited to a period of not longer than two years and county commissioners to a period not longer than three years.

I come now to the consideration of the remaining part of your question: "Whether a legal extension of the already existing contract can be granted to cover this period of time." (Meaning January 1, 1937, to August 23, 1937).

It is apparent from a reading of the provisions of Sections 7604 to 7609, inclusive, that the primary purpose of these statutes was to obtain a revenue from the idle moneys of the school boards and provide adequate

security for same. These moneys are "public funds" and should be jealously guarded for the benefit of the public. The legislature realized that public funds protected by acceptable security in the custody of a depository, were more secure than those funds in the custody of an individual. Sections 7604 to 7609, inclusive, General Code, have provided for the establishment of a depository of school funds under certain named restrictions, in order that the people of the district or subdivision in which their schools were situated may learn what disposition has been made of their money, so far as the custody of the same is concerned.

It is obvious from a reading of Sections 7606 and 7608, *supra*, that all proceedings in connection with competitive bidding and deposit of money, and connected with the adoption of the board's resolution and the making of the contract must be so conducted as to insure full publicity, and be open at all times to public inspection. These provisions are mandatory, and substantial compliance therewith must be had. In the case of *The State, ex rel. The Kenton National Bank vs. The Board of Education of the Kenton City School District*, 103 O. S., 54, it was held:

"In receiving bids and letting a contract for the deposit of public funds by a board of education, under Sections 7606 and 7608, General Code, providing that full publicity be given in connection therewith, such provisions are mandatory, and substantial compliance therewith must be had."

To permit an extension "of the already existing contract" is absolutely contrary to the provisions of the statutes and defeats the very purpose of the law. The legislature placed great stress on "full publicity" so that the public can be fully apprized of all matters leading up to and including the final contract for the deposit of the school funds. The transaction for an extension of the existing contract would be private and only within the knowledge of the bank and board of education; it would involve no publicity and give no opportunity to the public to learn the place of custody of their school funds until August 23, 1937.

It is therefore my opinion that an extension of an already existing contract cannot be entered into from January 1, 1937, to August 23, 1937.

In specific answer to your inquiry, it is my opinion:

(1) That a board of education can enter into a contract with a member bank of the Federal Reserve System for the deposit of school funds for the period of time extending from within thirty days after the first Monday in January to August 23, 1937, after full compliance by the board of education and the bank with all the requirements prescribed by Sections 7604 to 7609, inclusive, General Code.

(2) That a board of education and a member bank of the Federal Reserve System cannot extend an already existing contract providing for the deposit of school funds from January 1, 1937 to August 23, 1937.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

117.

APPROVAL—GRANT OF EASEMENT TO LAND IN JENNINGS
TOWNSHIP, FULTON COUNTY, OHIO—A. H. RAABE.

COLUMBUS, OHIO, February 10, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain grant of easement, No. 427, executed to the State of Ohio by A. H. Raabe of Jennings Township, Putnam County, Ohio, conveying to the State of Ohio, for the purposes therein stated, a certain tract of land in said township and county.

By the above grant there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instrument, I find that the same has been executed and acknowledged by the grantor in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.