to the bank offering the highest rate of interest and giving sufficient security presupposes that the banks bidding for the deposit offer to pay interest in some amount."

In the light of the foregoing, and in specific answer to your inquiry, it is my opinion that a state statute, such as Section 7605, General Code, requiring that a contract for the deposit of public funds be awarded to the bank or banks offering the highest rate of interest, implies the payment of interest in some amount, although no minimum rate is stated, and such statute is a state law requiring the payment of interest within the meaning of the proviso contained in Section 11b of the Banking Act of 1933.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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2152.

PUBLIC FUNDS—COUNTY BOARD OF EDUCATION UNAUTHORIZED TO DEPOSIT FUNDS IN BANK—BANK DEPOSIT INSURANCE AFFORDED BY BANKING ACT NOT ADEQUATE SECURITY FOR PUBLIC FUNDS—INTEREST ON SUCH DEPOSITS REQUIRED—PROCEDURE WHEN SUBDIVISION UNABLE TO OBTAIN DEPOSITORY —BOARD OF EDUCATION AUTHORIZED TO PROCURE LIABILITY AND PROPERTY DAMAGE INSURANCE WHEN.

*SYLLABUS:*

1. *County boards of education do not have the actual custody of any public funds and are not authorized by law to deposit money in banks. The moneys constituting "the county board of education fund" spoken of in Section* 4744-3, *General Code, are to be held in the county treasury and deposited by the county commissioners in county depositories as provided by Sections* 2715 *et seq. of the General Code of Ohio.*

2. *The guarantee or insurance of bank deposits afforded by virtue of the Banking Act of* 1933, *is not such security as may be furnished by a bank under the laws of Ohio, as security for deposits of the public funds of the state, counties, municipalities, school districts and townships within the state.*

3. *Unless a bank furnishes proper security for deposits of public funds under the several depository laws of this state relating to the deposit of public funds of the state, counties, municipalities, school districts and townships, lawful contracts for the deposit of these funds can not be made with it, and a bank receiving such deposits with knowledge of the nature thereof, which does not furnish security as provided by the statutes of Ohio, will be held to account in full for the deposits so received, together with all profits accruing therefrom.*

4. *The state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the authorities of municipal corporations are not permitted, under the several depository laws of this state, to enter into contracts with banks or trust companies for the deposit of the public funds under their control, without interest.*

5. *Where public authorities, such as the state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the*

*proper awarding authority of municipal corporations are unable to make awards of deposits of the public funds under their control, by reason of their failure to receive bids therefor from a bank or banks or a trust company willing and able to pay interest on said funds as provided by law and to secure the deposits in the manner prescribed by the statutes, of the state of Ohio, after due advertisement therefor, they are without power to enter into depository contracts for the deposit of their funds.*

6. *Where a board of education is unable to procure a depository for the funds of its school district in the manner provided by law, its funds should be placed in the custody of the treasurer of the city or county in which the school district is located as provided by Section* 4784, *General Code. Funds consisting of tax revenues distributable to a school district by the county auditor may remain in the county treasury to be drawn therefrom by the school district treasurer on the warrant of the county auditor in sums of not less than* $100.00 *as provided by Section* 2690, *General Code.*

7. *Boards of education are empowered by virtue of Section* 7731-5, *General Code, to procure liability and property damage insurance on the school wagons or motor vans used for the transportation of the school pupils of its district and all pupils transported by means of such vehicles, whether the school district has title to those vehicles or whether the title to the vehicles is vested in some third party and the vehicles are temporarily transferred to the board of education for its use in the transportation of pupils.*

COLUMBUS, OHIO, January 11, 1934.

HON. CARLOS M. RIECKER, *Prosecuting Attorney, McConnelsville, Ohio.*

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

> "The County Board of Education has asked me to write to you for an opinion relative to their deposits which are now in the bank. The bonds given by the various banks as required by Section 2723 Seq. of the General Code, will expire January 1st, 1934, and the said banks have refused to give additional bonds for the coming year, their reason being, that under the new Banking Code the federal government insures all funds up to and including the sum of $2500.00. The banks also refuse to pay any interest on deposits of any public funds on and after Jarnuary 1st, this coming year.
>
> The balance deposited with these banks at certain times will average more than $2500.00. The Board is very desirous of knowing what they will do with their funds on and after January 1st, 1934, since the banks refuse to give any bond and also to pay interest on the same.
>
> The Board of Education also has asked me to secure an opinion from your office relative to insurance on school busses. In this school district the school boards have school busses which are merely transferred to them by the driver for the school period only, and at the end of the school period the school board usually transfers the title to the bus back to the driver. In most cases they require insurance to be carried on these busses for the safety of the children who ride the busses.

Under the above set-up, is it possible for the boards of education of the local townships to expend money for insurance on the said busses?"

County boards of education do not have the actual custody of any public funds, and are not authorized by law to deposit money in banks. The moneys constituting "the county board of education fund," spoken of in Section 4744-3, General Code, are to be held in the county treasury and deposited by the county commissioners in county depositories, as provided for by Sections 2715 et seq. of the General Code. I assume therefore the inquiry of your county board of education relates to the deposit of school funds by district boards of education, and have prepared this opinion accordingly.

It is a well settled principle of law that boards of education have such powers only, as are delegated to them by law. See *State ex rel. Clark* vs. *Cook, Aud.,* 103 O. S. 465; *Schwing* vs. *McClure,* 120 O. S. 335. In providing depositories for public funds under the control of a board of education, the board is limited to the providing of such depositories in the manner prescribed by law, and if none can be provided in that manner, that is, if no bank or banks meet the requirements of law as to school depositories, a board of education is powerless to provide a depository at all.

In the event a board of education is unable to secure a depository that meets the requirements of law, its funds should be placed in the custody of the treasurer of the city or county, as the case may be, in which the school district is located, as provided by Section 4784, General Code, which reads as follows:

"If for any reason, a depository in such district ceases to act as custodian of the school moneys, they shall be placed in the custody of the treasurer of the city or county in which the school district is located as provided in section 4763. Such moneys shall be held and disbursed by the treasurer in all respects as required by law until another depository is provided for such moneys. Thereupon he shall place such money in the depository and his duties and obligations relating thereto shall then cease."

So far as local tax revenues accruing to a school district are concerned, such revenues may remain in the county treasury instead of being regularly distributed to the school district, to be drawn by the proper treasurer on the warrant of the county auditor in sums of not less than $100.00, as provided by Section 2690, General Code.

The law with reference to the providing of school district depositories is contained in sections 7604 et seq. of the General Code of Ohio. Section 7604, General Code (115 O. L. 308) provides in part:

"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 moneys coming into the hands of its treasurer."

Sections 7605 and 7607, General Code (115 O. L. 419) provide in substance, that the deposit mentioned in Section 7604, General Code, shall be made in a bank or banks that offer at competitive bidding "the highest rate of interest for

the full time the funds or any part thereof are on deposit." It is also provided that the bank or banks designated by a board of education to receive deposits shall secure the safekeeping and accounting therefor by the giving of a good and sufficient bond or the deposit of certain enumerated classes of securities. (See Opinions of the Attorney General for 1927, page 2164.) These statutes further provide:

> "The treasurer of the school district must see that a greater sum than that contained in the bond and represented by the par value of other collateral is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond and the par value of other collateral."

It will be observed that the statute expressly limits the deposits made by a board of education and its treasurer in a bank, to those only that are secured by a bond and "other collateral" and expressly provides that the treasurer and his bondsmen shall be liable for any losses that may occur on account of deposits not so secured. The "other collateral" spoken of in the statute clearly means the security which the statute requires a bank to furnish as security for the deposits received, in addition to or in lieu of a bond. The classes of securities enumerated in Sections 7605 and 7607, General Code, which must be furnished by a bank as collateral for their deposits are:

> (1.) "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;"
>
> (2.) "bonds of the state of Ohio, or of any other state of the United States,"
>
> (3.) "county, municipal, township or school bonds issued by the authority of the state of Ohio, or of any other state or territory of the United States,"
>
> (4.) "notes issued under authority of law by any county, township, school district, road district or municipal corporation of this state, or of any other state or territory of the United States; provided that the issuing body politic has been in existence at least ten years and has not defaulted at any time since the year 1880 in the payment of the principal or the interest of any of its bonds and provided that the treasurer of the school district is of the opinion that said bonds are good and collectible;"
>
> (5.) "farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916."

The guarantee or so-called insurance afforded by the federal government, for deposits in member banks of the federal reserve system as provided for in "The Banking Act of 1933" at present, and until July 1, 1934, unless that date is advanced by executive order, is limited to $2500.00. Even after July 1, 1934, or such other date prior thereto as the President of the United States may fix, when the full guarantee of deposits provided for by the said banking act becomes effective, the guarantee or insurance of deposits in member banks of the federal reserve system is so limited as to not afford complete security for the depository needs of many school districts.

Aside from the practical difficulty of a depository bank which is a member bank of the federal reserve system or a member of the Temporary Federal De-

posit Insurance Fund affording by means of the federal guarantee of banks deposits ample security for the deposit of school moneys, the legal question is presented as to whether or not this guarantee is such as may be furnished by a depository bank under the Ohio law, as security for funds deposited by a board of education, even to the extent afforded by the guarantee, thus justifying a treasurer of a board of education in making deposits in a depository bank which meets other requirements of the law, to the extent covered by the federal guarantee.

Without any doubt whatever, it is the prerogative of the legislature to fix the manner and extent of depositing school funds in banks, and to fix the security for such deposits that may be accepted by the depositor and that must be furnished by the depository bank upon receiving and accepting the deposit. Having done so, it is not within the power of a board of education or its treasurer to make such deposits in a manner otherwise than that fixed by the legislature or to accept as security for such deposits any guarantee or other security than that fixed by the legislature. Any deposits not made in the manner prescribed by law, or secured otherwise than as the statutes prescribe, would be an irregular or unauthorized deposit and under the decisions of our Supreme Court a bank receiving such an unauthorized deposit of public funds, knowing them to be public funds, will be held to account for the full amount of the deposit and the profits arising from it. (See *Bank* vs. *Newark,* 96 O. S. 453.)

The question is not important if a bank other than a member bank of the federal reserve system or a bank which is not a member of the Temporary Federal Deposit Insurance Fund should be designated by a board of education as its depository. The fact is, however, that most banks in the state of Ohio that are available as depositories and able and willing to become such depositories are now, or soon will have become, member banks of the federal reserve system or members of the Temporary Federal Deposit Insurance Fund under the terms of the Federal Reserve Act as amended, and the Banking Act of 1933, and will be governed by the terms of those acts as to federal guarantee of deposits, payment of interest and other regulations contained in those acts. This opinion is prepared with that fact in mind.

Clearly, the federal guarantee or insurance of bank deposits in these member banks does not come within any of the classes of securities enumerated in the Ohio statutes, that may be pledged by a bank as security for deposits made by the treasurer of a board of education and accepted as such, unless it may be said to be an "obligation of the United States * * for the payment of principal and interest of which the faith of the United States is pledged."

In a sense, this insurance is an obligation for the payment of which the faith of the United States is pledged, but the immediate question is whether it is the kind of "obligation" meant by the legislature in enacting the provision. The security afforded to a depositor by the federal insurance of deposits provided for by the Banking Act of 1933, under the terms of that act, is not available to the depositor until after the bank is closed, which may be done only by the comptroller of the currency in the case of national banks or by the superintendent of banks in the case of a state bank or by action of the board of directors of the bank. In other words, the security afforded by the federal insurance of deposits is not immediately available to a depositor upon default by the bank, and can not be realized on or enforced until the bank is formally closed. This fact alone is not perhaps entirely dispositive of the question as there is no express language in the depository statute that requires a pledged security for deposits to be immediately available upon default. The postponement of availability after

default of a pledge of security, is not consonant, however, with the idea of a pledge.

A more definite guide to the intention of the legislature as to the nature of the obligations and securities that may be pledged by a depository bank as security for public deposits, is the fact that whatever security is pledged for such deposits must be deposited or hypothecated with the political subdivision or public agency whose deposits are being secured. This provision of the statutes as to depositing the pledged securities will be found in express language in practically all depository laws and has been consistently inserted in this class of laws since such laws were first enacted. (See Section 330-3, General Code, as to state depositories; Sections 2732 and 2735, General Code, as to county depositories; Section 4295, General Code, as to municipal depositories; and earlier forms of those statutes.) The present statutes relating to school district depositories (Sections 7605 and 7607, General Code) do not in terms so provide. The language used with reference to this matter in the last two revisions of these statutes, in 1927 and 1933, is ambiguous, to say the least. It is as follows:

> "Such bank or banks shall give a good and sufficient bond or other interest bearing obligation of the United States, etc."

This expression was first used in these statutes upon their revision in 1927 (112 O. L. 197). It was copied precisely as used at that time in the revision of 1933 (115 O. L. 419). In earlier forms of these statutes, since provision was first made for the security of school deposits in this manner, the statutes had expressly provided that the deposits should be secured by the giving of a bond or the "depositing" of certain securities. The intent of the legislature, however, in the enactment of these statutes in 1927 and in 1933 was no different, in my opinion, than though an express provision had been made that the securities that might be furnished in lieu of a bond or in addition to a bond must be "deposited" with the board of education whose moneys constituted the deposit which was being secured. It was so held by a former Attorney General, in an opinion rendered by him after the statutes had been amended in 1927. In his opinion, which appears in the published Opinions of the Attorney General for 1927, at page 2164, it was held:

> "When a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education, secure the deposits of public funds by the giving of a good and sufficient bond, or the deposit of the classes of securities enumerated in Sections 7605 and 7607, General Code, as amended by the 87th General Assembly."

A "deposit" or "hypothecation" of an obligation or security, as the term "hypothecate" is used in the county depository law (Sections 2728, 2729, 2731 and 2732, General Code) presupposes something tangible and the delivery of possession of the concrete evidence of the obligation to the depositee or person with whom the obligation or security is hypothecated. The making of these provisions on the part of the legislature clearly evinces an intention on its part, in my opinion, that the classes of securities that may be pledged or hypothecated by a depository bank to secure the public deposits of the state, counties, municipalities and school

districts under their respective depository laws must be evidenced by something tangible, the possession of which should be delivered to the proper public agency and held by it as security for its deposits, and which upon default may be immediately used to make good the loss occasioned by that default.

Moreover, this conclusion as to the intent of the legislature, is supported as to the county depository law wherein the term "hypothecate" is used instead of the term "deposit" in speaking of the securing of county deposits, by the terms of Section 2735, General Code, which reads as follows:

> "The county commissioners shall make ample provision for the safe keeping of hypothecated securities. The interest thereon, when paid, shall be turned over to the bank or trust company so long as it is not in default. The commissioners may make provisions for the exchange and release of securities and the substitution of other securities or of an undertaking therefor."

In an opinion of a former Attorney General, found in Opinions of the Attorney General for 1927, at page 990, it is held:

> "Securities deposited with a board of education by a depository of public funds should be kept at all times under the control and dominion of such board."

In the course of the above opinion it is said:

> "Since the provision of Section 7605, General Code, is that these securities shall be deposited, and the inference is plain that the deposit shall be made with the board of education, it is clear that there should be an actual delivery of the securities in the custody of the board. This is necessary in order that the security may be available at once upon default in payment of the funds deposited with the depository bank."

The obligation of the United States growing out of the insurance of bank deposits as provided by the Banking Act of 1933, if, in fact it may properly be called an obligation of the United States, is not an obligation evidenced by a tangible, concrete security that may be deposited with a board of education or delivered into the possession of the board, and is not, therefore, in my opinion, such an obligation as was within the contemplation of the legislature in the enactment of the provisions of Sections 7605 and 7607, General Code, whereby depository banks of boards of education are permitted to secure the boards' deposits by the deposit of securities in lieu of, or in addition to, the giving of a bond.

Another cogent and perhaps conclusive reason why the federal insurance of bank deposits as provided for by the Banking Act of 1933, may not be hypothecated or deposited for the security of deposits of school funds by virtue of Sections 7605 and 7607, General Code, or any other sections of the General Code, or for the deposit of county, municipal or township funds by virtue of the statutes of Ohio providing for the making of such deposits is that this insurance is not strictly speaking, an obligation of the United States or one for which the faith of the United States, is pledged. It is an obligation of the "Temporary Federal Deposit Insurance Fund" until July 1.

1934, or such other date prior thereto as may be fixed by order of the President, and after that time it is an obligation of the "Federal Deposit Insurance Corporation." It is true that the funds constituting the Temporary Federal Deposit Insurance Fund and those of the Federal Deposit Insurance Corporation from which any losses of deposits would be paid, consist for the most part of funds of the United States. That does not in my opinion, make this insurance an "obligation of the United States, for the payment of the principal and interest of which the faith of the United States is pledged," as that expression is used in Sections 7605 and 7607, General Code, relating to the deposit of school funds, and in Section 2732, General Code, relating to the deposit of county funds, or in any other section of the General Code, relating to the deposit of public funds.

I come now to a consideration of the question of the payment of interest on public deposits. Member banks of the federal reserve system are not prohibited by the terms of the Banking Act of 1933, from paying interest on public deposits in all cases. Section 11 (b) of said act, amending Section 19 of the Federal Reserve Act as amended, provides with reference thereto, 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, however, that this paragraph shall not apply * * to any deposit of public funds made by or on behalf of any state, county, school district or other subdivision or municipality with respect to which payment of interest is required under state law."

It remains to determine whether or not the payment of interest on deposits of the public funds of a school district in its duly designated depository bank is required under the law of this state. Prior to the last amendment of Sections 7605 and 7607, General Code, interest was required on school deposits at a rate not less than two per cent for the full time the funds or any part thereof were on deposit. As amended in 1933, these statutes provide that the deposit shall be made in the bank or banks that "at competitive bidding, offer the highest rate of interest for the full time the funds or any part thereof are on deposit."

The question of whether or not this provision of the statutes required the payment of any interest was considered in Opinion No. 2151 rendered under date of January 11, 1934. It was there held:

> "A state statute, such as Section 7605, General Code, requiring that a contract for the deposit of public funds be awarded to a bank or banks offering the highest rate of interest, implies the payment of interest in some amount although no minimum rate is stated and such statute is a state law requiring the payment of interest within the meaning of the proviso contained in Section 11 (b) of the Banking Act of 1933."

It follows, therefore, that if a board of education after due advertising receives no bids from a bank or banks offering to pay interest in some amount on its deposits, it is without power to provide a depository for its funds.

With respect to the procuring of liability and property damage insurance covering school busses and pupils transported in such busses, Section 7731-5, General Code (115 O. L. 311) provides as follows:

"The board of education of each school district may procure liability and property damage insurance covering each school wagon or motor van and all pupils transported under the authority of such board of education. This insurance shall be procured from a recognized insurance company authorized to do business of this character in the state of Ohio, and shall include compensation for injury or death to any pupil caused by any accident arising out of or in connection with the operation of such school wogan, motor van or other vehicle used in the transportation of school children. The amount of liability insurance carried on account of any school wagon or motor van shall not exceed one hundred thousand dollars."

The terms of the above statute are broad enough, in my opinion, to permit boards of education to procure liability and property damage insurance covering school busses and pupils transported by means of those busses, whether the board has title to those busses or whether the busses are owned by someone else and are temporarily tranferred to the board of education. See Opinion No. 1675, rndered under date of October 5, 1933.

In the light of the foregoing discussion, I am of the opinion:

1. County boards of education do not have the actual custody of any public funds and are not authorized by law to deposit money in banks. The moneys constituting "the county board of education fund" spoken of in Section 4744-3, General Code, are to be held in the county treasury and deposited by the county commissioners in county depositories as provided by Sections 2715 et seq. of the General Code of Ohio.

2. The guarantee or insurance of bank deposits afforded by virtue of the Banking Act of 1933, is not such security as may be furnished by a bank under the laws of Ohio, as security for deposits of the public funds of the state, counties, municipalities, school districts and townships within the state.

3. Unless a bank furnishes proper security for deposits of public funds under the several depository laws of this state relating to the deposit of public funds of the state, counties, municipalities, school districts and townships, lawful contracts for the deposit of these funds can not be made with it, and a bank receiving such deposits with knowledge of the nature thereof, which does not furnish security as provided by the statutes of Ohio, will be held to account in full for the deposits so received, together with all profits accruing therefrom.

4. The state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the authorities of municipal corporations are not permitted, under the several depository laws of this state, to enter into contracts with banks or trust companies for the deposit of the public funds under their control, without interest.

5. Where public authorities, such as the state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the proper awarding authority of municipal corporations are unable to make awards of deposits of the public funds under their control, by reason of their failure to receive bids therefor from a bank or banks or a trust company willing and able to pay interest on said funds as provided by law and to secure the deposits in the manner prescribed by the statutes of the state of Ohio, after due advertisement therefor, they are without power to enter into depository contracts for the deposit of their funds.

6. Where a board of education is unable to procure a depository for the funds of its school district in the manner provided by law, its funds should be placed in the custody of the treasurer of the city or county in which the school district is located as provided by Section 4784, General Code. Funds consisting of tax revenues distributable to a school district by the county auditor may remain in the county treasury to be drawn therefrom by the school district treasurer on the warrant of the county auditor in sums of not less than $100.00 as provided by Section 2690, General Code.

7. Boards of education are empowered by virtue of Section 7731-5, General Code, to procure liability and property damage insurance on the school wagons or motor vans used for the transportation of the school pupils of its district and all pupils transported by means of such vehicles, whether the school district has title to those vehicles or whether the title to the vehicles is vested in some third party and the vehicles are temporarily transferred to the board of education for its use in the transportation of pupils.

Respectfully,
JOHN W. BRICKER,
*Attorney General.*

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2153.

APPROVAL, NOTES OF SCOTT VILLAGE SCHOOL DISTRICT, PAULDING COUNTY, OHIO—$1,035.00.

COLUMBUS, OHIO, January 11, 1934.

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

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2154.

APPROVAL, NOTES OF YOUNGSTOWN CITY SCHOOL DISTRICT, MAHONING COUNTY, OHIO—$250,000.00.

COLUMBUS, OHIO, January 11, 1934.

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

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2155.

OFFICES COMPATIBLE—MAYOR OF INCORPORATED VILLAGE AND MEMBER RURAL BOARD OF EDUCATION.

*SYLLABUS:*

*The offices of mayor of an incorporated village and member of a rural board of education are compatible.*

COLUMBUS, OHIO, January 11, 1934.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

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