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DEPOSITORY — TREASURER OF STATE — TREASURER OF SUBDIVISION OR OFFICER EXERCISING FUNCTIONS OF TREASURER OF SUBDIVISION—MAY NOT ENTER INTO CONTRACT FOR INACTIVE DEPOSIT OF PUBLIC FUNDS WHEREBY WITHDRAWALS ARE SUBJECT TO NOTICE IN EXCESS OF THIRTY DAYS—SECTION 135.14 RC.

SYLLABUS:

The treasurer of state, treasurer of a subdivision, or officer exercising the functions of a treasurer of such subdivision may not under the provisions of Section 135.14, Revised Code, enter into a contract for the inactive deposit of public funds whereby withdrawals are subject to notice in excess of thirty days.

Columbus, Ohio, December 29, 1955

Hon. Paul Hinkle, Superintendent of Banks
Department of Commerce, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“It has been called to my attention that banks are entering into contracts with treasurers of political subdivisions, as evidenced by the attached copy of certificate of deposit.

“I would appreciate your formal opinion on the question of a bank or trust company eligible to become a public depository making application for inactive deposits and entering into written contract with the Treasurer of the State of Ohio or treasurer of any subdivision thereof when the terms of the contract provide for a period of repayment in excess of thirty days written notice referred to in Sections 135.14 and 135.20, Revised Code of Ohio.”

In connection with your inquiry consideration must be given to Opinion No. 785, Opinions of the Attorney General for 1937, page 1438, the syllabus of which states as follows :

“Section 2296-14, General Code, confers upon the Treasurer of State and treasurer or other officer exercising the functions of treasurer of any subdivision discretionary power to enter into a written contract providing that a greater than thirty days’ notice in advance of withdrawals may be given for the withdrawal of moneys of his subdivision placed on inactive deposit.”

However, any evaluation of the applicability of Opinion No. 785, *supra*, to the question propounded by you necessitates consideration of the wording of the statute at the time the opinion was rendered and subsequent legislative history of Section 2296-14, General Code, the predecessor of Section 135.14, Revised Code, to which you have directed my attention in your letter of inquiry.

At the time Opinion No. 785, *supra*, was rendered, Section 2296-14, *supra*, read as follows :

“Active deposits shall be made in the form of commercial accounts, and subject to check. Inactive deposits shall be evidenced by negotiable certificates of deposit each of which shall provide on its face that the amount of such deposit is payable upon written notice to be given *not less than* thirty days before the date of repayment or, in the discretion of the treasurer, by written contracts, each of which shall provide that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the expiration of the period of notice which must be given by the treasurer in writing *not less than* thirty days in advance of withdrawals.” (Emphasis added.)

In Opinion No. 785, *supra*, the then Attorney General relied upon the use of the emphasized words “not less than” in reaching the conclusion which I have already noted. After the publication of that opinion it is significant to note that in the next succeeding regular session of the General Assembly, Section 2296-14, *supra*, was amended solely to the

extent of deleting the words "not less than." It follows, then, that the only conceivable purpose for the amendment would be to avoid the conclusions of Opinion No. 785, and to prohibit a contract providing for a notice of withdrawal of inactive public deposits in excess of thirty days.

I am further persuaded to this view by a reading of Section 135.20, Revised Code, which provides as follows:

"Whenever the governing board is of the opinion that the actual amount of active deposits subject to the check of its treasurer is insufficient to meet the maximum anticipated demands on such active deposits for the succeeding two months, it shall direct the treasurer to transfer from the inactive deposits to the active deposits an amount sufficient to meet such demands subject to restrictions upon the withdrawal of inactive deposits. The board shall designate in such order the inactive depositories from which withdrawals for such purpose shall be made and the amounts to be withdrawn from each. *The treasurer shall immediately give thirty days' written notice of such withdrawal to each public authority affected thereby, and at the expiration of the period of such notice shall make such withdrawals by presentation of certificates of deposit, or otherwise, in such manner as the board provides by appropriate regulations.* In case there are two or more public depositories of the inactive public deposits subject to such withdrawal, the board shall make such withdrawals from the public depositories paying the lowest rates of interest and in proportional amounts as near as is practicable."

(Emphasis added.)

The emphasized portion of the foregoing clearly indicates that upon the occurrence of the contingency contemplated therein, the public funds must be withdrawn on thirty days' notice. A contract of deposit providing for a withdrawal on notice in excess of thirty days would be contradictory to this section, the provisions of which may not be waived by the public depositor concerned.

It is therefore my opinion and you are advised that the Treasurer of State, treasurer of a subdivision or officer exercising the functions of a treasurer of such subdivision may not under the provisions of Section 135.14, Revised Code, enter into a contract for the inactive deposit of public funds whereby withdrawals are subject to notice in excess of thirty days.

Respectfully,
C. WILLIAM O'NEILL
Attorney General