

375.

DEPOSITARIES—WHERE ORDINANCE REQUIRES THAT INTEREST BE COMPUTED ON DAILY BALANCES SUCH BALANCE IS MADE UP FROM DEPOSITS OF CHECKS, DRAFTS, COINS OR CURRENCY.

SYLLABUS:

1. *Where the ordinance of a municipality providing for public depositaries, specifically requires that interest shall be computed on daily balances, and where banks have duly entered into depositary contracts with such municipality for the use of public moneys, with full knowledge that interest on daily balances to be paid under the terms of said contracts had theretofore been interpreted to mean daily balances as shown on the books of the bank at the end of each day, whether such balances arose from deposits of checks, drafts, coin or currency, and where after entering into such contracts the interest due the municipality was in fact computed and paid by the banks upon such daily balances for a long period of time, such banks are liable for interest computed upon the daily balances shown by the records of the bank, regardless of whether or not the deposits of the public funds were made up of checks, drafts, coin or currency.*

2. *In the event of the depositary's failure to compute and pay interest upon such daily balances, findings for the amounts due may be made against such depositary.*

COLUMBUS, OHIO, April 23, 1927.

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

GENTLEMEN—I am in receipt of your communication requesting my opinion as follows:

“Prior to June 1, 1926, all of the depository banks of the city of Cleveland paid interest on the daily balances of the corporation funds from and including the date of deposit regardless of the character of the deposits as received from the treasurer of the city. From and after June 1, 1926, the active depositories, while crediting the full amount of each deposit on their own and the treasurer's records as of the date of such deposits, have refused to pay interest until the day of clearance on so much of such deposits as is represented by checks and drafts on other banks.

At the close of the month the depository deducts from the aggregate daily balances of the month as shown by its records the aggregate of checks and drafts for the number of days in clearance and computes the interest on the remainder. This procedure causes a loss of at least one day's interest on all of this class of items and when deposits are made on Saturdays or on the day preceding a holiday or when a holiday precedes or follows Sunday two or three days' interest is lost. The depositories are of the opinion that the words 'public money' used in the contract do not include checks and drafts on other institutions until such items are collected.

QUESTION 1. In view of the depository ordinances the proposals made by the banks, the depository contracts (copies of all of which are herewith enclosed), the practice outlined above, and the law on the subject, are the depository banks in question required to pay interest on all daily balances as evidenced by the receipt given the city treasurer?

QUESTION 2. In view of the depository ordinances the proposals and depository contract and in view of the meaning of the term 'money' as used therein and as interpreted by the courts when similarly used (121 Fed., 17-21 and 220 Fed., 950-953) can the depository banks legally refuse to receive the aforesaid checks and drafts as cash?

QUESTION 3. In view of the credits given by the said banks as evidenced by receipts held by the treasurers, may a finding for recovery be made for the amount of interest on the so called deferred deposits?"

You enclose a copy of the bid for the deposit of public moneys which was submitted to the commissioner of purchases and supplies of the city of Cleveland on March 9, 1925, by one of the banks located in the city of Cleveland, and a copy of the contract entered into between the bank and the city of Cleveland, after an award for the deposit of public moneys had been made to the said bank, in accordance with the proposals.

It appears from your letter and the contract entered into with the bank, that from the date of the contract, June 22, 1925, until June 1, 1926, interest had been paid by the bank to the city of Cleveland on daily balances of the city's account, based on the credits shown on the bank's and the city's records, regardless of whether or not those credits were made for deposits of cash or checks, or both, but that since June 1, 1926, the bank has refused to consider the amounts of deposited checks or drafts as a part of the daily balances for the purpose of computing interest until the checks and drafts had been collected, although these amounts had been credited as deposits both on the treasurer's books and on the books of the bank.

I also understand from your communication that at all times prior to June 1, 1926 all the depository banks in the city of Cleveland had paid interest on the daily balances of the city's funds in accordance with their contract therefor, from and including the date of the deposit, regardless of the character of the deposits.

Inasmuch as the bidding blanks used by the authorities of the city of Cleveland in receiving bids for the deposits of city funds have printed thereon the provision: "the bid or proposal made by each bank must conform to all the requirements of the laws of the state of Ohio as found in Section 4295 of the General Code and all the requirements of the municipal code of 1924 of the city of Cleveland as found in Sections 87 to 100 inclusive," I assume that there is no provision in the charter of the city of Cleveland that would in any way be material in the determination of your question.

Section 4295 of the General Code provides in part as follows:

"The council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state. * * *"

Sections 87, 88, 89, 92 and 93 of the Municipal Code of Cleveland, for 1924, respectively provide *inter alia* as follows:

"Section 87. Deposit of Public Moneys. All public moneys coming into the hands of the city treasurer, as city treasurer of the city of Cleveland, from whatever source, shall be deposited by the city treasurer as hereinafter provided, in such banks as are designated in the manner herein provided as the depositories of such money. * * *"

"Section 88. In the first and second issues of the City Record published in the month of February, 1925, and in the first and second issues of the City Record published in the month of February every third year thereafter, the commissioner of purchases and supplies shall publish a notice which shall invite sealed proposals from all banks coming within the provisions of this ordinance, which proposals shall stipulate the rate of interest they will pay respectively, for the use of so much of the public money as shall not exceed the aggregate of the paid-in capital stock and surplus of such bidding bank,

from the first day of July next after such bidding, to and including the 30th day of June, three years thereafter; * * *

"Section 89. Upon the day and at the hour specified in the notice provided for in the preceding section, the commissioner of purchases and supplies shall publicly open and read aloud all bids received pursuant to such notice. * * * Awards shall be made and announced by the city manager as in the case of other contracts, but in no case shall deposits be awarded to any bank in an amount exceeding its paid-in capital and undistributed surplus."

"Section 92. Any bank to which an award shall have been made under the preceding sections shall, upon the approval and acceptance of its undertakings or securities, become the depository of the money aforesaid for the period of three years and until the undertakings or securities of its successor as such depository are accepted. * * *

"Section 93. The moneys so deposited in any bank selected as depository shall bear interest at the rate specified in the proposal of such bank, to be computed on daily balances, on the 30th day of June and the 31st day of December of each year and at any time the accounts are closed. * * *

You have called my attention to two cases wherein the term "money" has been the subject of judicial definition, being the cases of *Montgomery County vs. Cochran et al.*, 121 Fed. 17, and *Bernet vs. Bank of Commerce and Trust Company*, 220 Fed. 950. In the latter case it is said:

"Money in the modern meaning of the word is not restricted to legal tender, coin or currency, but includes also such classes of paper as are in general use commercially as mediums of exchange."

Many similar definitions of the word "money" may be found in cases wherein courts have been called upon to construe statutes and contracts wherein the word "money" has been used. In fact in most cases the word is not confined to a strict technical meaning as of coins and currency.

To my mind, however, in view of the course of dealing which is shown to have existed between the city of Cleveland and the depository banks in the city of Cleveland, it is not necessary to resort to technical construction in order to determine the rights of the parties under the depository contract which you have submitted for my consideration.

It is apparent that the bank in submitting its proposal knew what the course of dealing had been under former depository contracts and how the rights of the parties were to be determined under the present contract. This is evident if for no other reason than the bank's own interpretation of the contract as shown by its acting under the same for nearly one year during which time it considered daily balances to mean just what it had formerly been considered to mean by depository banks under former depository contracts. Under former depository contracts and under this one for nearly one year "daily balances" were considered as meaning the amount of the deposits, less whatever debit items might be charged against the deposits, regardless of whether such deposits were made up of checks, drafts, coin or currency.

The proposal submitted by the bank was unconditional and the bid was for the use of so much of the public moneys as might be awarded pursuant to the terms, limitations, conditions and stipulations contained in the laws of Ohio and pertinent provisions of the municipal code of Cleveland. These laws provide for the payment of interest to be computed on daily balances and not on public moneys. Our question is not what is the meaning of the term "money", but, what is the meaning of the term "daily balances." In determining that in this case we have the benefit of the interpretation given to this contract by the parties themselves and we need look no further. The bank submitted a proposal based on a previous course of dealing. It accepted

an award and entered into a contract in accordance with the proposal. Thereafter it acted under the contract for nearly one year during which time it showed by its actions that the term "daily balances" was considered as meaning just what all the parties had previously considered it as meaning, and it cannot, during the life of this contract at least, place any other interpretation on the contract.

This question has previously been considered by this department in an opinion rendered to the Honorable William H. Vodrey, Lisbon, Ohio, found in the Opinions of the Attorney General for 1916, page 666, in which opinion a conclusion was reached similar to that herein expressed.

Specifically answering your questions in the order asked:

1. It is my opinion that depositary banks in the city of Cleveland, which have submitted bids for the use of the public money of the city of Cleveland in accordance with the proposal for bids of March 9, 1925, and have thereafter entered into depositary contracts with the city of Cleveland, in accordance with the said proposals and the laws of the state of Ohio and the Municipal Code of 1924 for the city of Cleveland, are required to pay interest on all daily balances of the public funds of the city of Cleveland as shown by their books and the book of the treasurer of the city of Cleveland, regardless of whether or not the deposits of the public funds were made up of checks, drafts, coin or currency.

2. The depositary banks of the city of Cleveland, acting under contracts such as you have submitted for my consideration, cannot legally refuse to receive deposits of checks and drafts to be credited to the account of the city of Cleveland as cash.

3. Findings for recovery may be made against depositary banks for the difference between the amount of interest paid on daily balances of public moneys of the city of Cleveland deposited with such bank and the amount that should have been paid in accordance with the terms of their contracts as interpreted in this opinion.

Respectfully,

EDWARD C. TURNER,
Attorney General.

376.

DISAPPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
H. C. MILLER.

COLUMBUS, OHIO, April 23, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—I acknowledge receipt of your communication of recent date, enclosing the official bond of H. C. Miller, as resident deputy state highway commissioner. The bond enclosed, was issued in lieu of the original bond given by Mr. Miller in 1923. This bond was issued for the reason that the original bond was not on file in the office of the Secretary of State, and the records of the Department of Highways and Public Works contain no reference to such a bond.

Inasmuch as this bond is dated in 1923, it will be necessary that the attorney in fact signing said bond in behalf of the surety company furnish evidence to this department that he was the attorney in fact for said company on the date that such original bond was executed, and that he was authorized to sign a bond of this nature in behalf of the surety company at that time.