

3029.

APPROVAL, NOTES OF HOUSTON RURAL SCHOOL DISTRICT, SHELBY COUNTY, OHIO—\$516.00.

COLUMBUS, OHIO, August 13, 1934.

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

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3030.

APPROVAL, NOTES OF GREEN RURAL SCHOOL DISTRICT, SHELBY COUNTY, OHIO—\$3,779.00.

COLUMBUS, OHIO, August 13, 1934.

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

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3031.

APPROVAL, BONDS OF CITY OF ST. BERNARD, HAMILTON COUNTY, OHIO—\$4,000.00.

COLUMBUS, OHIO, August 13, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3032.

APPROVAL, BONDS OF CITY OF ST. BERNARD, HAMILTON COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, August 13, 1934.

*Industrial Commission of Ohio, Columbus, Ohio.*

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3033.

BOARD OF EDUCATION—MAY PAY BANK FOR CASHING OF CHECKS AND WARRANTS WHEN.

## SYLLABUS:

*A Board of Education may lawfully pay a bank with which it does not have a depository contract, or a bank with which it has a depository contract, after the limitations of its deposit under said contract is reached, for the cashing of checks and warrants, if it is unable to have them cashed without charge.*

COLUMBUS, OHIO, August 13, 1934.

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

GENTLEMEN:—This will acknowledge the receipt of your request for my opinion in answer to a question submitted to you by a certain Board of Education. The question is as follows:

“Is it permissible for a Board of Education to pay a legally established depository a fee for the collection of a warrant issued by the County Treasurer as an advance, or in settlement of tax collection?”

In the letter to you submitting the above question it is stated:

“In order that you might better understand the background, it has been impossible for the local Board of Education to establish adequate depositories for school funds due to the refusal of banks to bid on public monies. This refusal, according to their explanation, is due to the minimum rate of interest and to the further fact that they are required to tender securities which they claim might result in a loss to them on account of the fluctuation of the market.

The result has been that we are forced to carry large sums of money in the form of currency in safety deposit boxes in bank vaults. *Since our sinking fund balance is more than sufficient to fill all depositories in the full amount of their contract limits*, it necessarily follows that all warrants received from the County Treasurer must be placed for collection, and thereafter upon receipt of the currency from such bank it is placed in our safety deposit box.

Whenever the bank balance has been decreased sufficiently, future deposits are made in the form of currency taken from these safety deposit boxes. We have been asked by the depository to accept currency in payment of these collection items in such denominations as would be most acceptable to them in the conduct of their banking business. It necessarily follows that we are taking smaller denominations, which means considerably more time on our part by way of verification than would be necessary if we demanded bills of larger denominations. Several instances have already occurred where the bank has asked us to give them bills of certain denominations when making a deposit. This was done by them to avoid the expense necessary in shipping in currency of the proper denominations for their own use.”

The amount of money that may be deposited in a public depository is, of course, limited by the contract between the depositor and the bank. Instances often occur no doubt, where the limit that may be deposited, as provided by the contract, is reached. In such cases, any later transactions between the depositor and the bank, by way of cashing checks or collecting warrants or drafts, would be extra-contractual. The customer under such circumstances could claim no rights or favors simply because it was a depositor under a public depository contract

with the bank and the bank would owe no particular duty to such customer that would not be owing to any other customer of the bank.

Where warrants or checks are received by a Board of Education, they necessarily must be cashed in some way to be of any benefit to the Board. Ordinarily, perhaps, little difficulty is met in cashing checks or warrants, as most banks in ordinary times are willing, as a matter of accommodation to its customers and perhaps as a matter of good business, to collect such items through their affiliated clearance channels without charge.

In the troublesome times through which banks have been passing and from which they have not yet fully recovered, it is conceivable that many banks were not willing to assume the risks, and probably could not afford to do so, of transmitting large sums of money from one bank to another, and especially if the banks were located in different cities, without remuneration. It costs a bank something to do this and it is often thought necessary to pass this cost on to the customer.

I am informed that the school district, which is the source of the present inquiry, is in a county having county depositories in cities that are several miles from the depository bank of the school district. Should warrants be issued by the County Treasurer to the Board of Education for advances or settlements at times when it is impossible because of limitations, to deposit them in their regular depository, it would be necessary for the Clerk-Treasurer of the Board of Education to go to the county depository upon which the warrant was drawn, get the cash and return with it to wherever the cash was being kept. Such a procedure would be inadvisable and in fact positively dangerous at it is clearly unsafe to transmit large sums of money by means of persons who are not equipped for it as are those who make a business of doing such things.

Unless the Clerk-Treasurer should do this, however, the only alternative would be to have it done by someone or some agency which is in the business, and that necessarily involves paying for the service, unless it can be procured as a matter of accommodation without pay. The clearance of checks, drafts and warrants and the transmittal of cash from one bank to another is a part of the banking business and banks are the usual agencies employed for that purpose.

It is a well recognized principle of law that Boards of Education have limited power. Their powers are limited by their grants of power. They have no powers which are not expressly granted to them or necessary to carry out such express grants of power. No express power is granted to a Board of Education by statute, to expend money for the cashing of warrants.

Clearly, however, they have a right to receive money from the County Treasurer by way of advances and settlements. They cannot demand that these funds be transmitted to them in cash and it is not the usual and ordinary method to pay such advances and settlements in cash. If they receive checks or warrants representing advances and settlements, these checks and warrants are of no use to them until they are cashed. They clearly have power to get them cashed that they may with the money carry out the express powers granted to them and enjoined upon them by law, to maintain the schools in their districts. If no other way exists to get them cashed than by paying for the service which the cashing of the warrants entails, they clearly have the power, in my opinion, to expend public funds in their possession for that purpose. This is a necessary power under such circumstances, to carry out the express powers granted to them. Such an expenditure is justified because of the exigencies of the situation, when it is impossible for the Board to function and perform its duties without making the expenditure, but it would be justifiable in such cases only.

On similar grounds, a former Attorney General in an opinion, which may be found in the published Opinions of the Attorney General for 1929, at Page 1646, held:

“Where municipal bonds are made payable at a specific bank, the Board of Sinking Fund Trustees of the municipality lawfully may enter into an agreement with the bank to pay for its services, made necessary for the redemption of the bonds or interest coupons thereon, whether the said bank is located in the municipality or outside the municipality and whether the said bank is the regularly designated depository of the municipality or not.”

I am, therefore, of the opinion that a Board of Education may lawfully pay a bank with which it does not have a depository contract, or a bank with which it has a depository contract after the limitation of its deposit under said contract is reached, for the cashing of checks and warrants, if it is unable to have them cashed without charge.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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3034.

GRAVEL—AS USED IN HIGHWAY CONSTRUCTION AND MAINTENANCE NOT MINERAL—COUNTY AUDITOR UNAUTHORIZED TO INCREASE TAXABLE VALUE OF LAND BECAUSE OF GRAVEL DEPOSIT.

*SYLLABUS:*

*Ordinary commercial gravel such as is used in grading township and county roads, is not a mineral within the meaning of section 5562, General Code. And the county auditor is not authorized by the provisions of this section to make and enter an increase in the taxable value of a tract of farm land by reason of the fact that such land contains a deposit of such gravel.*

*The county auditor is not authorized to make and enter an increase in the taxable value of a tract of land in the county under the provisions of section 5562, General Code, or of section 5548-1, General Code, after he has made up the tax list and duplicate of the taxable real property in the county and in the taxing district in which such tract of land is located, and after he has delivered such duplicate to the county treasurer and the owner of the land has paid taxes thereon for the first half of the current year on the original tax valuation of such land.*

COLUMBUS, OHIO, August 14, 1934.

HON. CHARLES D. HAYDEN, *Prosecuting Attorney, Mt. Vernon, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication in which you advise me that in December, 1933, apparently after a certain taxpayer in Knox County had paid the taxes for the first half of the year 1933 on a farm owned by him, the Auditor of Knox County made and extended on the