

3751.

APPROVAL, BONDS OF HENRY COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, November 12, 1931.

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

3752.

APPROVAL, BONDS OF VILLAGE OF MIDDLEPORT, MEIGS COUNTY,  
OHIO—\$4,500.00.

COLUMBUS, OHIO, November 12, 1931.

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

3753.

APPROVAL, BONDS OF VILLAGE OF HUDSON, SUMMIT COUNTY.  
OHIO—\$5,122.85.

COLUMBUS, OHIO, November 12, 1931.

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

3754.

APPROVAL, BONDS OF SMITH TOWNSHIP, MAHONING COUNTY.  
OHIO—\$13,000.00.

COLUMBUS, OHIO, November 12, 1931.

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

3755.

SANITARY DISTRICT FUNDS—DIRECTORS MUST SELECT DEPOSITORY YIELDING 2% INTEREST—WHEN DIRECTORS FAIL, TREASURER OF DISTRICT MUST DEPOSIT WITH REASONABLE SECURITY.

## SYLLABUS:

1. The director or directors of a sanitary district, created by authority of Sections 6602-34 et seq. of the General Code, are limited in the selection of a depository for the funds of the district to the selection of a depository that will pay at least 2% interest on the funds coming into its possession by reason of its being designated the district depository, and such director or directors are without authority to select a depository that will not pay at least 2% interest on the district funds deposited with it.

2. If the director or directors of a sanitary district do not designate a bank or depository as temporary or assistant treasurer or treasurers of the district by force of the authority granted in Section 6602-79, General Code, the said director or directors may lawfully require the treasurer of the district to deposit the funds in his custody in such banks or trust companies as will provide proper security to the treasurer therefor and will pay for the benefit of the district the highest obtainable rate of interest.

COLUMBUS, OHIO, November 12, 1931.

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

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

“Section 6602-79, G. C., which is part of the chapter relating to the establishment of sanitary districts contains the following provision:

‘Provided that if it should be deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution, select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of directors. For such deposits the district shall receive not less than two nor more than four per cent per annum.’

Question 1. When the board of directors or the treasurer are unable to deposit money in banks at a rate of not less than 2% nor more than 4% per annum, may they provide for the deposit of moneys at the best rate obtainable?

Question 2: In the event that you hold that they may not deposit money at less than 2%, what procedure shall the treasurer take to secure the moneys of the district?”

The “Sanitary District Act of Ohio” was enacted by the Legislature in 1919 (108 O. L., Part 1, page 634). It was codified as Sections 6602-34 to 6602-106 inclusive, of the General Code of Ohio. The purpose of the act, as stated in the title thereof, is:

“To prevent and correct the pollution of streams, to provide for the collection and disposal of sewage and other liquid wastes, and for the development of district water supplies, to authorize the organization of sewerage and sanitation and water supply districts.”

By the terms of the act, courts of common pleas are authorized to create sanitary districts within the state, when it is made to appear to the court, after the filing of a proper petition therefor, that the purposes of the act will be subserved by so doing.

Upon the creation of a sanitary district, as provided for by the act in question, it is given by the act the status of a political subdivision of the State of Ohio, a body corporate with all the powers of a corporation, having perpetual existence with power to sue and be sued, to incur debts, liabilities and obligations; it is authorized to exercise the right of eminent domain and of taxation and assessment as provided in the act; to issue bonds and to do and perform all things expressly authorized by the act; and all acts necessary and proper for the carrying out of the purposes for which it is created.

When a district so created lies entirely in a single county, one director of the district shall be appointed by the court. If the district lies in more than one county a board of directors shall be appointed to consist of one director from each county or part of a county embraced within the district.

The duties and powers of the director or directors are to adopt a seal, keep

a record of his or their proceedings, appoint a secretary, a chief engineer, an attorney, and such other engineers, attorneys and other agents and assistants as may be needful, and provide for their compensation; to furnish and equip an office; to approve plans for sewerage improvement or for other improvements consistent with the object of the creation of the district; to make surveys and investigations, appropriate property and let contracts; to issue bonds and levy taxes and assessments in the manner and to the extent authorized by the act, and generally, to do all things necessary or proper within the limitations of the act, to carry out the purposes for which the district is created.

In the event there is but one director, he shall select some suitable person as secretary. If there is more than one director, the person selected as secretary may or may not be a member of the board of directors.

The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist the board in such particulars as it may direct in the performance of its duties. The secretary shall also serve as treasurer of the district unless a treasurer is otherwise provided for by the board. (Section 6202-44, General Code.)

Nowhere in the act is there definite and specific authority for a director or board of directors of a sanitary district to appoint or employ a treasurer, as such, for the district, other than the provision quoted by you in your letter. Inferentially, perhaps, the authority may be said to exist. In Section 11, of the act (Section 6602-44, General Code) wherein authority is extended to the director or directors to employ such agents and assistants as may be needful, and which contains the statement that the secretary shall serve also as treasurer of the district, unless a treasurer is otherwise provided by the board, there is this statement:

“The employment of the secretary, treasurer, chief engineer and attorney for the district shall be evidenced by agreements in writing, which, so far as possible, shall specify the amounts to be paid for their services.”

All through the act when the custodian of the funds of the district is spoken of he is spoken of as the “treasurer.”

The provision with respect to the selection of a bank or banks as temporary or assistant treasurer or treasurers is contained in Section 46 of the act (Section 6602-79, General Code): This section authorizes the issuance of bonds by the director or board of directors of a sanitary district. It directs that such bonds when executed, shall be delivered to the treasurer of the district and by him sold. The said treasurer is required to provide from funds coming into his possession as the proceeds of tax levies, assessments or otherwise, for the retirement of said bonds and the payment of the interest thereon. It further provides:

“Said district treasurer shall, at the time of taking office, execute and deliver to the president of the board of directors of the said district, a bond with good and sufficient sureties, to be approved by the said board of directors, conditioned that he shall account for and pay over as required by law, and as ordered by said board of directors, any and all money received by him on the sale of such bonds, or any of them, or from any other source, and that he will only sell and deliver such bonds

to the purchaser or purchasers thereof under and according to the terms herein prescribed, and that he will, when ordered by said board so to do, return to said board, duly cancelled, any and all bonds not sold, which said bonds shall remain in the custody of the said president of said board of directors, who shall produce the same for inspection or for use as evidence whenever and wherever legally requested so to do. The said treasurer shall promptly report all sales of bonds to the board of directors, and the board shall issue warrants at the proper time for the payment of the maturing bonds so sold and the interest payments coming due on all bonds sold, and the said treasurer shall place sufficient funds at the place of payment to pay the same. In case proper warrants are not issued by the board of directors as herein provided, then the treasurer shall of his own accord place funds at the place of payment and the cancelled bonds and coupons and the receipts of the state treasurer shall be accepted in lieu of warrants. The successor in office of any such district treasurer shall not be entitled to said bonds or the proceeds thereof until he shall have complied with all the foregoing provisions applicable to his predecessor in office; provided, if it should be deemed more expedient to the board of directors, as to moneys derived from the sale of bonds issued or from any other source, said board may by resolution, select some suitable bank or banks or other depository, which depository shall give good and sufficient bond, as temporary or assistant treasurer or treasurers, to hold and disburse said moneys on the orders of the board as the work progresses, until such fund is exhausted or transferred to the treasurer by order of the said board of directors. For such deposits the district shall receive not less than two nor more than four per cent interest per annum. The funds derived from the sale of said bonds or any of them shall be used for the purpose of paying the cost of the works and improvements and such costs, expenses, fees and salaries as may be authorized by law and shall be used for no other purpose."

Other than the above provision with respect to the selection of a bank or banks as temporary treasurer or treasurers of a sanitary district, there is no authority contained in the act, or anywhere else, for the treasurer or treasurers to select a legal depository for the funds of the district, as is the case with counties, municipalities and school districts. No doubt if the director or board of directors deems it expedient to select a bank or banks as temporary or assistant treasurer or treasurers of the district and a bank qualifies therefor by giving a proper bond and paying or agreeing to pay the rate of interest fixed by the statute, the treasurer of the district would be exonerated and relieved of liability for the funds so deposited with the said depository in case of default or loss of the funds. Unless, however, the director or directors deem it expedient to follow this course and select a depository as temporary or assistant treasurer or treasurers, and the bank properly qualifies and receives the deposits the risk attendant upon the custody of the funds is the treasurer's and he should protect himself by insurance or the bond of a bank in which he as custodian of the fund, might deposit them.

Undoubtedly, if the director or directors do not select a depository as authorized by the statute, the treasurer would deposit the funds in his custody in some bank and probably would receive some interest on the funds so deposited.

There is no requirement that he collect interest on these funds although it would be to the advantage of the district if his deposit were carried in a bank that would agree to pay the highest rate of interest, providing proper security were given, and in my opinion, the director or directors may lawfully require the treasurer to secure for the district the highest possible rate of interest on the funds of the district commensurate with the proper security to the treasurer. In so doing, the law does not limit the rate of interest that may be accepted or received as it does when a depository or depositories is selected as temporary or assistant treasurer or treasurers.

It is well settled that if the treasurer receives interest on his deposit of the funds of the district, the interest so earned and received belongs to the district and not to the treasurer personally. *State ex rel. v. Maharry*, 97 O. S., 272; *Eshelby v. Board of Education*, 66 O. S., 71; *State v. McKinnon*, 15 O. C. C., N. S. 1, affirmed without opinion, 87 O. S., 474; *State ex rel. v. Schott*, 9 O. N. P., N. S. 522.

Although the director or directors of the sanitary district have broad powers with respect to the affairs of the district, it is my opinion, that inasmuch as the legislature has authorized definitely the designation of a depository as temporary or assistant treasurer or treasurers for the district but required that depository to pay not less than 2% interest on the funds in its custody the director or directors are limited to the selection of a depository that will pay that interest and do not have the power, so far as this authority is concerned, to designate any bank or depository as temporary or assistant treasurer or treasurers of the district that will not pay at least 2% interest on the funds coming into its possession by reason of such designation, and that no bank or depository may qualify for such designation unless it pays or agrees to pay the rate of interest specified in the statute.

I am of the opinion, however, that if no bank or depository is designated as temporary or assistant treasurer or treasurers for the district, by force of the authority granted in Section 6602-79, General Code, the director or directors may require the treasurer of the district to deposit the funds in his custody in such banks or trust companies as will provide proper security to the treasurer therefor, and will pay for the benefit of the district, the highest obtainable rate of interest.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3756.

DEPENDENT CHILD—MOTHER IN JAIL—PLACED IN CUSTODY OF JUVENILE COURT.

SYLLABUS:

*Where the mother of an infant child is placed in jail, and there are no relatives or friends to care for such infant, it should be placed in the custody of the juvenile court.*