2222.

COUNTY COMMISSIONERS—PROPERTY APPROPRIATED IN 1914 BUT NOT PAID FOR—TO BE PAID FOR NOW AT VALUE GIVEN THEN.

SYLLABUS:

Where county commissioners appropriated property for the purpose of widening roads in 1914, *and fixed the value of the property taken, but the owner of such property failed to accept the amount allowed by the commissioners, such owner is entitled to receive the value of said property according to the amount determined by the county commissioners at the time such property was appropriated, and the commissioners may pay him such amount at this time.*

COLUMBUS, OHIO, June 11, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date, requesting my opinion as follows:

> "Our county commissioners are anxious to know in the following matter:
>
> In 1914, about the middle of the year, in widening a road (now I. C. H. No. 7), appropriated land at $100.00 valuation by them; the owner thought it worth more than that amount and did not accept. The years have gone by, no check issued for the amount, no settlement made with the owner. The records show the amount allowed by the then board to have been regular and according to law.
>
> The question to be answered is, should the present board of county commissioners issue the check and pay the owner who is now demanding and ready to receive the $100.00 awarded in 1914?"

It is observed that you state that the proceedings for the appropriation of the land for which payment has not been made were had in 1914 and I assume that they were in all respects regular. The land in question was taken by the county commissioners in that year for the purpose of widening one of the roads under their jurisdiction and no payment has ever been made therefor.

Section 19 of Article I of the Constitution of Ohio reads in part as follows:

> "Private property shall ever be held inviolate but subservient to the public welfare. When taken in time of war, or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money * * * ."

The proceedings for the acquiring of the land for which payment has not been made were undoubtedly taken under the provisions of former Sections 6956-6, et seq., of the General Code, (101 O. L. 249), as those sections existed prior to their amendment on May 17, 1915 (106 O. L. 598), the amended sections becoming effective in 1915, after the proceedings in question were started. It is unnecessary to quote from said sections, inasmuch as you state in your letter that the records of the county com-

missioners show the amount allowed by the then board to have been regular and according to law.

When the title to the land appropriated was acquired by the county, compensation therefor was immediately due to the land owner. As provided in the above quoted section of the Constitution, compensation must be made to the owner for property appropriated, and I see no reason why the owner's failure to take the amount allowed him at the time the proceedings were had, would estop his collecting at this time the money due him for the land appropriated.

Therefore, answering your question specifically, I am of the opinion that the board of county commissioners of Gallia County should pay the owner of the land the amount awarded to him in 1914.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2223.

SCHOOL DEPOSITORY BANKS—SECURITIES—MUST BE KEPT UNDER EXCLUSIVE CONTROL AND DOMINION OF BOARD OF EDUCATION.

SYLLABUS:

School depository banks which, at the instance of the board of education whose funds they receive on deposit, are permitted to furnish security for said funds by the hypothecation of certain securities, may not designate another bank as trustee for the holding, and disposal in case of default, of the securities so hypothecated, but must place them under the complete and exclusive control and dominion of the board of education whose deposits are to be thus secured.

COLUMBUS, OHIO, June 11, 1928.

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

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

> "The Mogadore Savings Bank of Mogadore, Ohio, has deposited with the First Trust and Savings Bank of Akron, Ohio, bonds, government and municipal, as security for the funds of two school districts. We are enclosing herewith the hypothecation of such bonds to the Akron Trust Company in trust and also correspondence in regard to the same.
>
> Question: Does the making over of these bonds to the First Trust and Savings Bank of Akron constitute a proper security for the funds of the two school districts in question under the law?"

It appears that the Mogadore Savings Bank of Mogadore, Portage County, Ohio, was, sometime prior to May 21, 1928, duly designated by the board of education of the Mogadore Village School District, to be the depository of the funds of said village school district. Thereafter, under date of May 21, 1928, the Mogadore Savings Bank, for the purpose of furnishing security for deposits which might be made with it, executed and delivered to said board of education a certain instrument in writing, in the form of a bond, which reads, as appears from the copy enclosed with your letter, as follows: