

1452.

DEPOSITARIES OF SCHOOL FUNDS—BUILDING AND LOAN ASSOCIATION MAY NOT BECOME DEPOSITORY—SECTIONS 7606 AND 7608 CONSTRUED.

SYLLABUS:

*Mailing copy of resolution to each bank in the district is not a compliance with sections 7606 and 7608, General Code which provide, "all proceedings * * * must be so conducted as to insure full publicity".*

Boards of education can receive bids on active and inactive accounts and must designate as depositaries the bank or banks bidding the highest on each type of account.

Building and loan associations may not become depositaries for school funds.

COLUMBUS, OHIO, May 10, 1924.

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

Gentlemen:—

I am in receipt of your recent communication as follows:

"The board of education of a city school district passed a resolution to establish a depository under the provisions of section 7604 G. C., copy of which resolution is herewith enclosed. Under this resolution the clerk of the district mailed a copy of the resolution, together with the bidding blank (copy herewith enclosed) to each bank in the school district. You will note that the bidding blank asked for bids upon active and inactive accounts. Bids were received as follows:

	<i>Active Accounts</i>	<i>Inactive Accounts</i>
Bank "A"-----	4.1 Per Cent	4.1 Per Cent
Bank "B"-----	3.75	4.
A Bldg. & Loan Assn.-----		4.5
Bank "C"-----	3.	4.
Bank "D"-----	3.5	4.

Question 1. Was full publicity given in requesting bids by the mailing of a copy of the resolution to each bank in the district and were bids legally received under such notification?

Question 2. If the bids were legally received, was the board of education authorized to accept bids for active and inactive accounts and designate a bank as its depository for the active account and another bank or banks for its inactive account?

Question 3. If the board of education was authorized to designate a bank as its active depository, was it required to designate bank bidding the highest rate on the active account?

Question 4. Under the bids as submitted, could the board of education legally deposit any money whether active or inactive in any of these banks at a rate less than 4 per cent? Bank "A" having a capital stock of \$250,000.00 and the amount of money to be deposited being greater than its capital.

Question 5. May a board of education legally award any part of its funds to a building and loan association?"

Section 7604, General Code, provides :

"That within thirty days after the first Monday in January, 1916, and every two years thereafter, the board of education of any school district by resolution shall provide for the deposit of any or all moneys coming into the hands of its treasurer. But no bank shall receive a deposit larger than the amount of its paid in capital stock and in no event to exceed one million dollars, except that in case the board of education shall find that it will be for the best interests of any school district such bank or banks shall be permitted to receive an amount in no event to exceed five million dollars."

Section 7605, General Code, provides :

"In school districts containing two or more banks such deposit shall be made in the bank or banks, situated therein, that at competitive bidding offer the highest rate of interest which must be at least two per cent. for the full time funds or any part thereof are on deposit. Such bank or banks shall give a good and sufficient bond, or shall deposit bonds of the United States, the State of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, at the option of the board of education, in a sum not less than the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond. But no contract for the deposit of school funds shall be made for a longer period than two years."

Section 7606, General Code, provides :

"The board shall determine in such resolution the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given. All proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity and shall be open at all times to public inspection. If in the opinion of the board of education there has been any collusion between the bidders, it may reject any and all bids and arrange for the deposit of funds in a bank or banks without the district as hereinafter provided for in districts not having two or more banks located therein."

Section 7608, General Code, provides :

"The resolution and contract in the next four preceding sections provided for, shall set forth fully all details necessary to carry into effect the authority therein given. All proceedings connected with the adoption of such resolution and the making of such contract must be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection."

In *State ex rel vs. Board of Education*, 103 O. S., p. 54, it was held :

"In receiving bids and letting a contract for the deposit of public funds by a board of education, under Sections 7606 and 7608, General Code, providing that full publicity be given in connection therewith, such provisions are mandatory, and substantial compliance therewith must be had.

Where a board of education directs its clerk to give notice of the receiving of bids for the deposit of the funds of the district, under section 7606, General Code, and the clerk in pursuance thereof gives only verbal notice to the banks within the district, such notice cannot be said to meet the demands of the statute providing that all proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity."

Judge Hough, on page 57 of the opinion in this case, said:

"The legislative purpose in laying stress on 'full publicity' although not setting forth any particular species of notice and not providing for any definite time, evidently was that the public should be fully apprised of all matters leading up to and including the final contract for the depository of the funds of the district."

In answer to your first question, you are therefore advised that full publicity was not given in requesting bids by the mailing of a copy of the resolution to each bank in the district and that such bids were not legally received.

Your second question is, may a board of education receive bids as to active and inactive accounts and designate one bank as depository of active accounts and another for inactive accounts.

Section 7604, General Code, as far as pertinent, provides:

" **** The board of education of any school district by resolution shall provide for the deposit of any or all moneys in the hands of its treasurer. *** "

Section 7606, General Code, as far as pertinent, provides:

"The board shall determine in such resolution the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given. **** "

It will be noted that the above sections do not provide for active and inactive accounts but do provide for the deposit of "any or all money" and for "all details for carrying into effect the authority herein given".

In *State ex rel vs. Reh fuss*, 7 Ohio C. C., (n. s.) p. 179, the court say (p. 180 of the opinion):

"It is obvious that the primary purpose of the law is to obtain a revenue from the idle moneys of the school boards."

If, as stated by this court, the primary purpose is to obtain revenue, it is logical to permit the board of education to designate the form of accounts which will obtain the most revenue, consistent with safety.

In answer to your second question, you are therefore advised that boards of education may accept bids for active and inactive accounts and may designate

one bank as its depository for active accounts and another bank or banks for its inactive accounts.

Your third question is whether a board is required to designate a bank bidding the highest rate on an active account, or whether it may designate a bank which is not the highest bidder on such active account.

Section 7605, as far as pertinent, provides :

"In school districts containing two or more banks, such depository shall be made in the bank or banks, situated therein, that at competitive bidding offer the highest rate of interest which must be at least two per cent. for the full time funds or any part thereof are on deposit."

By the above section, such deposits must be made in a bank or banks that offer the highest rate of interest, which must be at least two per cent. There is no authority to select any bank for a depository unless it is highest bidder. As the board of education has seen fit to receive bids as to active and inactive accounts, it is my opinion that it must select as depository for the different accounts the bank bidding highest on such accounts.

The answer to your first question makes unnecessary any answer to your fourth question.

Your fifth question is whether a board of education may legally award any part of its funds to a building and loan for a depository. Sections 7604 and 7605, General Code, throughout refer to banks and in no place refer to building and loan associations.

A former Attorney General, in an opinion found in Opinions of the Attorney General for 1913, Vol. 1, p. 859, held that :

"Inasmuch as the statutes do not so authorize, building and loan associations may not become depositories of county, city and township funds."

It is believed the same reasoning is applicable to boards of education.

You are therefore advised that building and loan associations may not become depositories of school funds.

Respectfully,

C. C. CRABBE,

Attorney General.