From this examnation, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

3092

BANK—FUND OPENED BY A MINOR OR IN NAME OF MINOR—WHERE MINOR WITHDRAWS FUND—BANK DISCHARGED FROM LIABILITY IN SAME MANNER AS IF MINOR WERE OF LEGAL AGE.

SYLLABUS:

Under Section 710-119, General Code of Ohio, when an account is opened in any bank by or in the name of a minor, and the fund is withdrawn by the minor himself by a withdrawal slip or some other sort of a receipt or acquittance, such as a check payable to a third person, the bank paying such instruments is discharged from liability on such payments in the same manner as if such minor were of legal age.

COLUMBUS, OHIO, October 13, 1938.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent letter in which you direct my attention to Section 710-119, General Code of Ohio, and inquire as to whether or not, under said section, a bank might accept a deposit from a minor and honor checks thereon payable to third parties.

Section 710-119, General Code of Ohio, reads as follows:

> "When an account is opened in any bank by or in the name of a minor it shall be payable to such minor, and such payment shall be as valid as if such minor were of legal age."

It is necessary to first consider the language of this section and ascertain the intent of the Legislature at the time such section was enacted into law.

There seems to be (1) the granting of a right to a minor to open an account for himself in any bank, (2) a recognition of the right of anyone to open an account in the name of a minor, (3) a provision that if such an account is opened, it "shall be payable to such minor", and (4) if and when payment is made by a bank, the same "shall be as valid as if such minor were of legal age."

The fourth provision seems to be a recognition of a question of liability on the part of a bank if such minor would disaffirm his contract upon arriving at the legal age, and a legislative endeavor to eliminate such a liability by providing for a discharge of the bank from liability upon paying the account to the minor.

Your question is as to whether or not such an account may be withdrawn by the minor himself on checks or withdrawal slips payable only to himself, or whether a minor may write checks on such an account payable to third persons and, if such is the case, whether a bank would incur any liability for paying checks drawn to the order of third persons in the event the minor should disaffirm the contract upon arriving at legal age. Under the following authority it would seem that in either event payment by the bank would discharge it of any further liability:

The case of *Cate* vs. *Paterson,* 25 Mich., 191, is cited in Words and Phrases, 1st series, p. 5245, and holds:

> "Where a bank issues a paper writing which recites that a certain person had deposited in the bank a certain sum, payable to the order of another, the word 'payable' should be construed as an express promise *to pay on demand.*"

The recognition of the right of a minor to make a deposit or open an account in a bank was set out very forcefully in the case of *Smalley* vs. *Central Trust & Savings Company, 72 Ind.* App., 296, 125 N. E., 789, which is a leading case and the authority for the article in Corpus Juris on this subject. In this case Bertha Smalley, a married woman under 21 years of age, deposited $1600.00 in a bank, and the money was drawn out by her husband on checks signed by her. Upon the bank paying such checks, Bertha Smalley did not make any objection whatever to the bank that the money should not have been paid to her husband. There was no statutory authority in the state permitting such an account to be opened in a bank by a minor. The court in its opinion said:

> "From whatever source it was received, it (money) was her own property, and under her own control. What should she have done with it? Should she have kept it on her person and dealt it out from time to time as necessity required, or should she have deposited it in a reputable banking institution until she required it? All are ready to say that this latter course was the sensible one for her to pursue. But, if appellant's contention is correct, she could not so deposit her money except at the risk of the bank refusing to repay it to her, until she

is twenty-one years of age, and the bank would have been fully justified in so refusing, for any payment to her or to her order would have been at its peril. It would have assumed the risk that at her majority she would disaffirm the payment, and demand her money again. It is the common practice of banking institutions to accept the deposit of minors, sometimes of children, of their earnings, for Christmas saving, or for the purpose of accumulating for some other definite purpose, or as a means of training such depositors in habits of frugality. But if such deposits cannot be repaid to the minor depositors until they have reached their majority, then such banking business must of necessity end, for the banks cannot afford to assume the risk. Appellant must fail in her contention. We hold that when appellant deposited her money in appellee's bank, as she had a lawful right to do, the relation of debtor and creditor between the appellee and appellant was created, that appellant had a right to her money again, that it was the duty of appellee to restore it to her, upon a proper check or demand, and that the bank assumed no liability in so doing. * * We do not by this decision disturb the general rules of law as to the validity of contracts of minors. We do hold, however, that where a minor is in absoulte and lawful possession of money as her own property, whether from the proceeds of settlement with her guardian, as compensation for services rendered, or from any other lawful source, puts it in a bank, or other place of safe keeping, rather than to carry it on her person, she has a right to reclaim it at any time, even though she is yet a minor, and the person or institution so paying it to her assumes no risk in so doing."

The case of *Phillips* vs. *Savings and Trust Co. of St. Louis*, 85 S. W. (2nd) 923, decided September 10, 1935, rehearing denied October 1, 1935, seems to be the latest pronouncement of the law where there is statutory authority for the opening of accounts in the name of a minor. In this case the plaintiff contended that a trust was established when he, a minor, deposited money in a school savings plan, because the bank knew at the time that he was a minor. The statute in question is Section 5465 R. S. of Missouri, 1929, and reads as follows:

"When any deposit shall be made by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and free from the control or lien of all other persons except creditors and shall be paid together with interest thereon to the persons in whose name the deposit shall

> have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit or any part thereof to the trust company."

It was held in this case that such deposit did not create a trust in favor of a minor. At page 927 the court said:

> "It appears to be a clear recognition of the right of a minor, in the lawful possession of his own money, to deposit it with a trust company and withdraw it as though he were of full age."

It would seem that any deposit contract of a minor which is free from fraud would be one beneficial to the infant, and that a deposit in a bank would merely make the bank a creditor of the minor to the extent of the fund deposited. The bank's obligation would be to hand back money to its customer or pay it to his order. I can see nothing in such arrangement that would be detrimental to the infant's interest in any way.

In the light of the foregoing authorities, it is my opinion that under Section 710-119, General Code, when an account is opened in any bank by or in the name of a minor, and the fund is withdrawn by the minor himself by a withdrawal slip or some other sort of a receipt or acquittance, such as a check payable to a third person, the bank paying such instruments is discharged from liability on such payments in the same manner as if such minor were of legal age.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

3093.

COUNTY FUNDS—BANK MESSENGER—AGENCY MAY BE PAID FOR TRANSPORTING COUNTY FUNDS IN ARMORED CAR FROM COUNTY TREASURER'S OFFICE TO DEPOSITORY BANK—CONTRACT TO INDEMNIFY TREASURER AGAINST LOSS BY THEFT, EMBEZZLEMENT OR OTHERWISE.

SYLLABUS:

County funds may be expended to pay a so-called bank messenger agency for transporting county monies in an armored car from the county treasurer's office to a depository bank under a contract providing