

purposes, by authority of Section 7669, General Code, and a high school committee is appointed, in accordance with the provisions of Section 7670, General Code, to manage said high school, there is no authority in the committee so chosen to purchase a site or let a contract for the erection of a building.

In view of the specific provisions for separate action of the several boards of education in effecting a union of the districts for high school purposes, the absence of provision for joint action of the boards in respect to any matters in relation to such united districts and the further provision that where a tax levy is authorized to be submitted, each board must submit the same and the requirement that it carry in each district before it shall become operative in either, the legislative intent seems faintly clear that the several boards act separately with reference to all matters within their control pertaining to joint high schools established by authority of Section 7669, General Code.

Besides, there is no authority for the organization and functioning of a joint board composed of the several boards interested in a joint high school with respect to matters pertaining to such school, and we must therefore conclude that in the purchasing of a site for such a school and the construction of a joint high school building thereon the several boards of education interested must act separately and concurrently rather than jointly.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

2955.

SCHOOL MONEYS — QUALIFICATION OF DEPOSITORY — WHEN  
 BOARD OF EDUCATION MAY CHOOSE A BANK OUTSIDE SCHOOL  
 DISTRICT.

*SYLLABUS:*

*When a board of education has contracted with a bank in the district for the deposit of its school moneys and the said bank is not qualified under the law to receive on deposit all the moneys coming into the hands of the treasurer of the school district, and there is no other bank in the district willing to receive said moneys, furnish the proper security therefor and pay at least two per cent interest on said deposit, the said board of education may lawfully contract with a bank outside the district and conveniently located, which offers the highest rate of interest, not less than two per cent and furnishes the proper security for the deposit of the district's surplus moneys over and above what may be deposited in its regular depository.*

COLUMBUS, OHIO, February 17, 1931.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

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

“Pursuant to Section 7604 of the General Code of Ohio, the Board of Education of Pataskala Village School District, in Licking County, provided for the deposit of all moneys coming into the hands of its treasurer into the Peoples Bank of Pataskala. The amount of the bond given by the bank is \$20,000.00.

At the November 1920 election, a \$50,000.00 bond issue was voted and the bonds have been sold. Should this amount be deposited in said bank, the total deposit resulting will be larger than the amount of its paid in capital stock and surplus.

The village board is, therefore, inquiring whether it may not proceed under Section 7607, G. C., by resolution to invite bids from several banks that are conveniently located, interpreting the first clause of said section which reads: 'In all school districts containing less than two banks' to mean school districts containing less than two *qualified* banks."

The pertinent portions of Sections 7604, 7605 and 7607, General Code, read as follows:

Sec. 7604. "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 surplus 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 interest of any school district such bank or banks shall be permitted to receive an amount in no event to exceed five million dollars."

Sec. 7605. "In school districts containing two or more banks such deposits 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. \* \* \*"

Sec. 7607. "In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, which shall not be less than two per cent for the full time the funds or any part thereof are on deposit. \* \* \*"

Your inquiry is not clear as to whether or not at the time the depository contracts were entered into by the board of education in question, there were two banks in the school district. If there were not two banks in the district at that time, the depository contracts would have been let in accordance with Section 7607, General Code, and that section would still govern at this time in the making of a depository contract for any surplus that can not, under the law, be deposited in the Peoples Bank under the contract made with it. I assume, therefore, that there are two banks in the district and if the other bank will pay at least two per cent on moneys deposited with it, I believe it to be the duty of the board of education to deposit in that bank all moneys over and above the amount which the Peoples Bank is qualified to receive.

The terms of Section 7604, General Code, are mandatory in that a board of education is required to provide for the deposit of any and all moneys coming into the hands of its treasurer. It is well settled that no bank may receive deposits larger than the amount of its paid in capital stock and surplus. Under an earlier form of the statute, it was held by a former Attorney General in an opinion reported in Opinions of the Attorney General for 1922 at page 278, as follows:

"The amount of school funds that may be deposited in a bank by a board of education under authority of Section 7604, General Code, can not in any case, or under any circumstances, exceed the amount of the bank's paid in capital stock."

The apparent purpose of the provisions of Section 7607, *supra*, to the effect that where a school district contains less than two banks, depository contracts may be made with other banks conveniently located, is to insure competition for the school funds of a district and to make provision that the school district shall receive interest on its funds to the extent of at least two per cent, to the end that the district may secure the best possible contract for the deposit of its school moneys, and obviously, even if there are two banks in a district and they refuse to bid, or are not qualified for any reason to receive the funds of the district, or are not able to furnish the proper security for those funds, the board of education of the district has no other alternative than to fall back on the provisions of Section 7607, General Code, and make depository contracts with some bank conveniently located that will bid at least two per cent for those funds and properly secure them as provided by law.

Under the facts stated in your letter, the board of education is required, in accordance with the provisions of Section 7604, General Code, to make some provision for the deposit of the proceeds of the bond issue in question and if the bank with which they have a depository contract is not qualified to receive those funds and there is no other bank in the district that is qualified or willing to receive the funds and pay at least two per cent interest thereon and furnish the security required by law, I am of the opinion that the board may lawfully contract with some bank outside the district and conveniently located which will receive the funds, furnish the proper security and pay at least two per cent interest on the funds so received.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2956.

**GASOLINE TAX—COUNTY COMMISSIONERS MAY NOT ISSUE NOTES  
IN ANTICIPATION OF THE RECEIPT OF FUNDS THEREFROM.**

**SYLLABUS:**

*A county may not issue notes as provided in Section 2293-4, General Code, in anticipation of the receipt of funds from the gasoline tax to be distributed to the several counties within this state, notwithstanding the fact that a county may have sought to have incurred other indebtedness in anticipation of the receipt of such funds or in anticipation of the issuance of such notes.*

COLUMBUS, OHIO, February 17, 1931.

HON. CEDRIC W. CLARK, *Prosecuting Attorney, Pomeroy, Ohio.*

DEAR SIR:—YOUR letter of recent date is as follows:

"I am enclosing herewith copy of resolution adopted by the Board of County Commissioners of Meigs County and desire to ask whether or not your office has ruled upon the legality of borrowing money in anticipation of the gasoline tax under authority of Section 2293-4, General Code.