

2315.

BANKS AND TRUST COMPANIES—TREASURER OF STATE MAY ACCEPT BONDS ENUMERATED IN SECTION 330-3 G. C. HAVING PAR VALUE EQUAL IN AMOUNT TO AMOUNT OF FUNDS DEPOSITED BUT MARKET VALUE OF WHICH IS LESS THAN THAT AMOUNT.

Bonds of the classes enumerated in section 330-3 G. C. having a par value equal in amount to the amount of funds deposited, but the market value of which is less than that amount, may be accepted by the state treasurer as security for the funds deposited with banks and trust companies under the state depository act.

COLUMBUS, OHIO, August 10, 1921.

HON. R. W. ARCHER, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relative to the construction of section 330-3 G. C., one of the statutes governing the depositing of state funds in banks and trust companies, was duly received.

After conferring with you on the subject, I understand that the particular question you desire answered is whether or not the practice of accepting as sufficient security for deposits, bonds having a par value equal in amount to the amount of the funds deposited, but the market value of which may be less than that amount, is warranted by section 330-3 G. C.

Section 330-3 G. C. reads as follows:

“The treasurer of state before making such deposits shall require that each and every approved bank or trust company to deposit with him United States government bonds, bonds of this state, county, township, school district, road district, or municipal bonds of this state at not less than their par value, in an amount equal to the amount of money to be deposited with such banks or trust companies, or surety company bonds, which when executed shall be for an amount equal to the amount deposited plus 5 per cent, conditional for the receipt and safe keeping and payment over to the treasurer of state or his written order of all moneys which may come into the custody of such bank, or trust company under and by virtue of this act (G. C. secs. 321 to 330-11) and the interest thereon when paid shall be turned over to the bank or trust company so long as it is not in default. And further said bonds so given shall include a special obligation to settle with and pay to the treasurer of state for the use of the state interest upon daily balances on said deposit or deposits, at the rate bid for, but not less than 3 per cent per annum for inactive deposits and 2 per cent per annum for active deposits (on a 365 day basis) payable quarterly on the first Monday of February, May, August and November of each year, or any time when withdrawals are made or the account is closed.”

After careful consideration, and having in mind your statement that the market value of some of the bonds mentioned in the section is almost fifteen per cent below par, and that a loss might result to the state in case of the failure of the bank or trust company depositing such bonds as security, unless the state should continue to hold the bonds until maturity, or until such time as the market value thereof shall have reached par, and indulging the presumption that the bonds will be paid in full at maturity by the authority

issuing them, the conclusion has been reached that the statute, by reason of its own terms, justifies the practice mentioned.

It is, however, respectfully suggested that you consider the advisability of hereafter requiring banks and trust companies to furnish the surety company bonds provided for in the section, in cases where the market value of bonds offered as security is below par, as the statute, in my opinion, confers upon the treasurer of state the right to select either of the two classes of security therein provided for.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2316.

APPROVAL, BONDS OF ERIE COUNTY IN AMOUNT OF \$27,500 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, August 11, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2317.

DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS—AUTHORITY TO MAKE CONTRACTS FOR CONSTRUCTION OF BUILDINGS UNDER CONTROL OF ABOVE DEPARTMENT—DIRECTOR OF FINANCE MUST FIRST CERTIFY MONEY AVAILABLE—WHEN TAX LEVY FOR BUILDING FUND OF COLLEGES AND UNIVERSITIES AVAILABLE—HOUSE BILL NO. 325 (109 O. L. 360) CONSTRUED.

1. *Under the provisions of section 154-40 G. C., found in H. B. 249, 109 O. L. 118, the authority to make contracts for the construction of buildings under the control of the state government, or any department, office or institution thereof, is given to the department of highways and public works. This section applies to contracts for the construction of the buildings at Ohio State University for which appropriations are made by H. B. 325, 109 O. L. 360.*

2. *Prior to the making by a state officer, board or commission of any contract involving the expenditure of money, the director of finance must, under the provisions of section 2288-2 G. C. (109 O. L. 130) first certify that there is a balance in the appropriation pursuant to which such obligation is required to be paid, not otherwise obligated to pay precedent obligations; but there is no requirement that he certify as to any balance in the fund in the state treasury upon which the appropriation is to operate. Said section merely requires that all contracts, agreements or obligations involving the expenditure of money, be brought within the amount set apart by the legislature for a particular purpose, and such setting apart may antedate the appearance of funds in the state treasury.*

3. *By reason of section 3 of H. B. 325 (109 O. L. 360) the appropriations of the proceeds of the educational building fund tax levy for the year 1921-1922 and for the year 1922-1923 take effect and are available on and after the first day of September, 1921, and for a period of two years thereafter. On said first day of September and during said period, contracts for the construction of necessary buildings at Ohio*