

4198.

APPROVAL, NOTES OF BOARDMAN RURAL SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$24,000.00.

COLUMBUS, OHIO, March 28, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4199.

TREASURER—KENT STATE COLLEGE—UNAUTHORIZED TO DEPOSIT FUNDS IN BANK—LIABLE ON HIS BOND FOR FAILURE TO ACCOUNT FOR FUNDS.

SYLLABUS:

As there is no statutory provision authorizing the treasurer of Kent State College to deposit in any bank the funds of such College, and as the treasurer's bond is conditioned upon the proper accounting for all moneys coming into his care, the state's protection is such bond and the liability of the treasurer himself and not the securities which any such bank may give to the treasurer to protect such deposits.

COLUMBUS, OHIO, March 29, 1932.

HON. JAMES O. ENGLEMAN, *President, Kent State College, Kent, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter which reads as follows:

"Kent State College has college funds deposited in the City Bank of Kent in varying amounts from month to month, and from day to day, but the peak of such deposits is \$36,000. As surety for such deposits the City Bank has deposited with the Board of Trustees of the College, first mortgages which total \$46,923. Each of the mortgages is upon unencumbered real estate located in Ohio, the value of which is more than double the amount loaned thereon.

Question: Are real estate mortgages of such description, and of such amount, sufficient protection under the law for deposits in the City Bank of Kent that are never greater than \$36,000? Your opinion is desired to guide us in the matter."

Section 7901-4, General Code, reads in part as follows:

"The board of trustees shall organize immediately after its appointment by the election from its members, of a president, a secretary and a treasurer. The treasurer, before entering upon the discharge of his duties shall give bond to the state of Ohio for the faithful performance of his duties and the proper accounting for all moneys coming into his care. The amount of said bond shall be determined by the trustees,

but shall not be for less sum than the estimated amount which may come into his control at any time. Said bond shall be approved by the attorney general."

Section 24, General Code, reads as follows:

"On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college, normal school or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed verified statement of such receipts. Where tuitions and fees are paid to the officer or officers of any college, normal school or university receiving state aid, said officer or officers shall retain a sufficient amount of said tuition fund and fees to enable said officer or officers to make refunds of tuition and fees incident to conducting of said tuition fund and fees. At the end of each term of any college, normal school or university receiving state aid the officer or officers having in charge said tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and disposition of the same."

I find no statutory provision which authorizes the treasurer or the board of trustees of Kent State College to deposit in any bank the funds of the College, and as the treasurer's bond is conditioned upon the proper accounting for all moneys coming into his care, the insolvency of the bank in which such funds are deposited would be no defense to any action to recover from the treasurer or his sureties any loss that may result by reason of such insolvency. *State, ex rel., vs. Harper*, 6 O. S. 608.

In the case of *Seward vs. National Surety Company*, 120 O. S. 47, the court said in its opinion:

"It has been the general policy, not only with government employees and appointees, but with state officers, county officers, township officers, and all other public officials, to hold the public official accountable for the moneys that come into his hands as such official, and his obligation has been held to be as broad as is the obligation of a common carrier of freight received for shipment; that is to say, that when he comes to account for the money received, it must be accounted for and paid over, unless payment by the official is prevented by an act of God or a public enemy; and burglary and larceny and the destruction by fire, or any other such reason, have not been accepted by the courts as a defense against a claim for the lost money. The decisions to this effect are so uniform and so numerous that no useful purpose would be served by restating the law that has been so many times stated so clearly."

See also Opinion of the Attorney General No. 4056, dated February 15, 1932, in which the second branch of the syllabus says:

"When a clerk of the common pleas court deposits money placed with him as security for costs and moneys received for fines, etc., in a bank until his regular monthly settlement, and if before such funds are withdrawn such bank is taken over by banking authorities for the purpose of liquidation the clerk of the common pleas court is liable for any loss of funds suffered thereby."

The state's protection is the treasurer's bond and the liability of the treasurer himself. There is no statutory authority to take other securities to protect the state, and I am therefore unable to say that the securities mentioned by you are any protection "under the law," so far as the state is concerned.

What, if any, securities such treasurer should take for his own protection is a matter for him to decide, and whether the mortgages you mention would sufficiently protect him would, of course, depend on the real estate market in the localities where the real estate covered by said mortgages is situated, taking into consideration the reduced price such real estate would probably bring in the event of foreclosure sales. I am not, however, passing upon the question of the right of a bank to give securities to protect such deposits.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4200.

FOX—MAY BE KILLED FROM NOVEMBER 15 TO JANUARY 1—MAY
BE PURSUED AT ANY TIME WHERE NO INTENT TO HARM AND
NO ACTUAL KILLING.

SYLLABUS:

1. *The restrictions provided in Section 1398, General Code, with respect to when a fox may be "taken or possessed," are restrictions as to when a fox may be killed.*

2. *Fox may be pursued with dogs at any time, providing there is no intent to kill or injure such animals and further providing that such animals are not in fact killed or injured.*

COLUMBUS, OHIO, March 29, 1932.

HON. CAMERON MEACHAM, *Prosecuting Attorney, Portsmouth, Ohio.*

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

"Section 1398, General Code of Ohio and paragraph 'A' thereof, provides that fox can be taken and possessed from the 15th day of November to the 1st day of January, both inclusive. I understand from reading this section that this provision applies to the entire State of Ohio. I should like to have an opinion as to whether the words 'taken and possessed,' means killing and also as to whether this section would prohibit or bar the chasing of fox with dogs when such fox are not killed and with no intent to kill or injure such animals."