

2512.

APPROVAL—BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY,  
OHIO, \$10,000.00.

COLUMBUS, OHIO, April 13, 1934.

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

2513.

SECURITIES—ARRANGEMENT BETWEEN BOARD OF EDUCATION  
AND FEDERAL RESERVE BANK HOLDING SECURITIES DEPOSITED  
WITH BOARD OF EDUCATION BY DEPOSITORY BANK IS  
LEGAL WHEN—

SYLLABUS.

*An arrangement between a board of education and a Federal Reserve Bank, whereby the Federal Reserve Bank holds in its possession securities deposited with the board of education by its depository bank to secure the bank's deposits therein, receipts to the board of education for these securities and agrees to dispose of the securities under instructions from the board of education and for its benefit upon default of the depository bank in the fulfillment of its contract, and the board of education agrees to release the securities upon fulfillment of the contract of the depository bank, is legal, and satisfies the requirements of the law that the board of education shall safely keep the securities, have control and dominion over them during the life of the depository contract and return them to the depository bank upon its fulfillment of the contract, as well as the intent and purpose of the law that the securities shall be available to the board of education upon default of the bank to the end that the depository bank's liability to the depository shall be satisfied.*

COLUMBUS, OHIO, April 14, 1934.

HON. JAMES M. HOWSARE, *Prosecuting Attorney, Preble County, Eaton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion concerning the legality of a proposed arrangement between a board of education and the Federal Reserve Bank of Cleveland, whereby the bank is to act as custodian of securities deposited with the board of education by its depository bank to secure the board's deposits. The proposed arrangement as stated by you, is as follows:

“The Board of Education for the Eaton Village School District purpose to enter into a depository contract with a local bank, for the deposit of its school funds and to accept bonds as security for said deposit, as provided in General Code Sections 7604-05-06, etc. The said bonds to be held by the Federal Reserve Bank of Cleveland, upon an unconditional order on the part of the local bank to the Federal Reserve Bank, to

deposit said securities subject to the order of the Board of Education of the Eaton Village School District, with the agreement that it would be necessary for the Board of Education to furnish a formal release of said securities upon the bank fulfilling the depository contract, or instructions of the Board of Education to the Federal Reserve Bank for disposition of the securities upon the local bank's failure to fulfill the depository contract. It is proposed that the local board of education receipt the bank upon its deposit of its securities with the Federal Reserve Bank, the latter furnishing the board of education a receipt of the deposit of the securities for safe keeping."

The deposit of school funds by a board of education is provided for by Section 7604 to and inclusive of Section 7608, General Code. Upon examination of these statutes, it will be found that a bank chosen as a depository of school funds must secure the funds deposited with it in pursuance of its depository contract, either by the giving of a bond or the deposit of certain securities. These statutes do not expressly provide for the manner of depositing these securities. It has been held, however, by former Attorneys General that a board of education whose deposits in its depository bank are secured by the hypothecation or deposit of securities, is responsible for the safe-keeping of the securities (Opinions of the Attorney General for 1921, page 745) and that therefore the securities should at all times be under the control and dominion of the board of education (Opinions of the Attorney General for 1927, page 990). It has also been held that in order that a board of education may discharge its responsibility for the safe-keeping of such securities it is necessary that the board have either actual or constructive possession of the securities. (Opinions of the Attorney General for 1928, page 1460.)

Moreover, the very purpose of depositing the securities is to secure the deposits and insure their return upon demand. These securities are deposited in the nature of a pledge and should therefore be immediately available to the depositor upon default of the bank.

In the course of the 1928 opinion referred to above, the Attorney General, after referring to the 1921 and the 1927 opinions, said:

"Clearly, if a board of education is to be held responsible for the safe-keeping of the securities deposited by depository banks it should have either actual or constructive possession of the securities. By constructive possession is meant that the securities should be under the control and dominion of the board of education in such a manner that they might at any time take actual physical possession of them without the consent and approval of any third intervening parties."

Under the proposed arrangement between the Eaton Village School District Board of Education and the Cleveland Federal Reserve Bank, it appears that all the requirements of constructive possession of the securities in the board of education are fulfilled, and that the securities are under the control and dominion of the board of education and that the securities would be immediately available to the board of education in case of default on the part of the bank and would pass into actual possession of the board upon demand therefor after the depository bank had failed to fulfill the depository contract. That is all that is required, in my opinion.

As stated by you, the Federal Reserve Bank is to receipt to the board of education for the securities and the board is to acknowledge the receipt of the securities from the depository bank. The Federal Reserve Bank is to dispose of the securities according to instructions of the board of education upon the default of the depository. That amounts to control and dominion over the securities for the purposes for which they are deposited with the board, and to availability of the securities to the board of education when necessary for the purposes which the law contemplates, and amounts to constructive possession of the securities by the board of education. The fact that the board agrees to release the securities upon the fulfillment of the depository bank's contract does not detract from the board's constructive possession of the securities during the life of the depository contract or its control and dominion over the securities during that time.

Such an arrangement is practically the same thing as the keeping of the securities by the board in a safety deposit box, which has always been recognized as proper, and is probably safer in theory at least, than the deposit of the securities in a safety deposit box controlled by the depository bank.

I am therefore of the opinion that an arrangement between a board of education and a Federal Reserve Bank, whereby the Federal Reserve Bank holds in its possession securities deposited with the board of education by its depository bank to secure the bank's deposits therein, receipts to the board of education for these securities and agrees to dispose of the securities under instructions from the board of education and for its benefit upon default of the depository bank in the fulfillment of its contract, and the board of education agrees to release the securities upon fulfillment of the contract of the depository bank is legal and satisfies the requirements of the law that the board of education shall safely keep the securities, have control and dominion over them during the life of the depository contract and return them to the depository bank upon its fulfillment of the contract, as well as the intent and purpose of the law that the securities shall be available to the board of education upon default of the bank to the end that the depository bank's liability to the depositor shall be satisfied.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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2514.

HOSPITAL—MUNICIPALLY OWNED AND OPERATED ENTITLED TO REIMBURSEMENT FOR CARE OF PATIENTS SUFFERING FROM MOTOR VEHICLE INJURIES WHEN.

*SYLLABUS:*

1. *The definition of a hospital contained in Section 1 of House Bill No. 80, 115 O. L. 482, includes municipally owned and operated hospitals if they are registered with the Department of Health of the State of Ohio and if they receive and care for patients suffering from motor vehicle injuries.*

2. *Municipally owned and operated hospitals which are entitled to the benefits of House Bill No. 80, 115 O. L. 482, may be reimbursed for per diem care of indigents suffering motor vehicle injuries even though such indigents had their legal settlement within the confines of the city owning and operating such hospital.*