

OPINION NO. 71-016**Syllabus:**

1. Active deposits of the state must be kept in Columbus banks, to the extent such banks are otherwise eligible and to the extent applications are made by such banks for "active deposits" of the state.

2. No basis exists for refusing applications from otherwise eligible institutions wherever located within the state, to become active fund depositories.

**To: Gertrude W. Donahey, Treas. of State, Chairman, State Board of Deposit,
Columbus, Ohio**
By: William J. Brown, Attorney General, February 25, 1971

I am in receipt of your request for my opinion respecting the deposit of "active" funds of the state, which states as follows:

"Does the State Board of Deposits have the authority, under the law, to deposit active funds of the State of Ohio in a depository, otherwise qualified to receive state funds, but located outside the limits of the City of Columbus; and committed with the same to accept an application for the deposit of such active funds made by a qualified depository, located outside the limits of the City of Columbus?"

State funds are divided into three classes, active deposits, interim moneys and inactive deposits. "Active deposits" may be characterized as operating cash in the nature of checking accounts. "Interim moneys" are moneys expected to be used within the course of the biennium but not immediately (Sections 135.13 and 135.14, Revised Code). "Inactive deposits" are moneys expected to be unused during that same period (Section 135.13, Revised Code).

Disregarding investment of interim moneys in other ways as permitted by Section 135.14, Revised Code, depositories of all three types of funds are restricted to national banks located in this state and banks as defined in Section 1101.01, Revised Code, subject to inspection by the State Superintendent of Banks (Section 135.03, Revised Code). Of these depository institutions, special provision is made in Section 135.04, Revised Code, respecting active deposits of state money, as follows:

"Any institution mentioned in section 135.03 of the Revised Code is eligible to become a public depository of the inactive deposits and interim deposits of public moneys of the state subject to the requirements of sections 135.01 to 135.21, inclusive, of the Revised Code.

"Any such institution having an office in Columbus is eligible to become a public depository of the active deposits of public moneys of the state; and in case the aggregate amount of active deposits of the public moneys of the state applied for by such eligible institutions is less than the aggregate maximum amount to be deposited as such, as estimated by the state board of deposit, said board may designate as a public depository of the active public deposits of the public moneys of the state, one or more institutions of the kind mentioned in section 135.03 of the Revised Code, which are conveniently located, subject to the requirements of sections 135.01 to 135.21, inclusive, of the Revised Code.

" * * * * * * * * *"

The quoted language would appear to be clear and unambiguous that active deposits of state money must be held in Columbus, to the extent such funds may be placed in otherwise eligible institutions. (By the phrase "eligible institutions", I refer to other requirements generally applicable to all depositories, such as the making of application (Section 135.10, Revised Code), the demonstration of financial capacity (e.g. Section 135.03, supra, stating maximum ratios of public and non-public funds); and the providing of security (e.g. Section 135.18, Revised Code)). Moreover, the quoted paragraphs require that, where these deposits cannot be legally placed in Columbus, they be placed in eligible institutions "which are conveniently located".

Other paragraphs of the same Section apply to the active deposits of governmental subdivisions. Without quoting the extensive provisions applicable to them, it is worth noting that such subdivisions are similarly directed to deposit not only active funds but interim and inactive funds in eligible institutions located "within the territorial limits" of the subdivision or, when such deposits are not feasible, under circumstances therein outlined, in institutions "conveniently located".

As to active deposits of the state, the current provisions reflect a long historical development.

Prior to the amendments of 1904, the Treasury of the State was the " * * * sole place for the deposit and safekeeping of the money of the state; * * *" and was described as the Treas-

urer's rooms in the capitol, "* * * together with the safes, vaults and other proper and necessary means for the security and safekeeping of the public money * * *." (55 Ohio Laws, 44).

In 1904, authorization was given to deposit state moneys in "banks or trust companies". (97 Ohio Laws, 535, et seq.). Section 4 of that Act gave the Treasurer general power to deposit public moneys in national banks and banks or trust companies incorporated under the laws of and doing business within the state that qualified under uniform standards. Section 7 of the Act, however, indicated the "active depositories" were to be two or more eligible institutions located in Columbus. Section 7 stated:

"The treasurer of state may designate two or more banks or trust companies or either of them located in Columbus, Ohio, eligible under the provisions of this act, as depositories, the same to be known as 'active depositories.' Said 'active depositories' shall be required to pay interest at a rate of not less than one per centum per annum on all daily balances."

These provisions were clarified in 1911 (102 Ohio Laws, 33 et seq.). Section 7 of that Act pointed more strongly to Columbus as the sole location for "active depositories". It read as follows:

"There shall be two classes of depositories; one shall be known as active depositories and the other as inactive depositories. The treasurer of state may designate one or more banks or trust companies, or either of them located in Columbus, Ohio, eligible under the provisions of this act as active depositories; money deposited in the inactive depositories shall be used when money in the active depositories shall not be sufficient."

That section was codified as Section 327 of the General Code.

In 1935, the authorization was broadened to permit banks and trust companies outside of Columbus but "within the boundaries of the state" to accept active deposits if, for stated reasons, the funds could not be placed in Columbus institutions (116 Ohio Laws, 31, et seq.). Section 327, General Code, as so amended, stated:

"There shall be two classes of depositories; one shall be known as active depositories and the other as inactive depositories. The treasurer of state may designate one or more banks or trust companies, or either of them located in Columbus, Ohio, eligible under the provisions of this act as active depositories."

tories; money deposited in the inactive depositories shall be used when money in the active depositories shall not be sufficient.

"If, because of the limitations of section 330-1 of the General Code, or because of the refusal or failure of banks or trust companies located in Columbus, Ohio, to qualify for and accept additional active deposits, the treasurer of state has on hand funds available for deposit in active depositories, he may designate one or more approved banks or trust companies located outside of Columbus, Ohio, but within the boundaries of the state of Ohio, as active depositories."

More elaborate and detailed procedures were established in 1937 (117 Ohio Laws, 226, et seq.), by the enactment of the Uniform Depository Act, involving assignment to a new location in the General Code (i.e. Sections 2296-1, et seq.). Section 5 of that Act (Section 2296-5, General Code), continued the immediately preceding general authorizations, but altered the institutions contingently eligible for active funds, when such funds could not be placed in Columbus institutions, from those "within the boundaries of the state" to those "conveniently located". Section 5 provided:

"Any institution mentioned in section 4 [G.C. § 2296-4] of this act shall be eligible to become a public depository of the inactive deposits of public moneys of the state. Any such institution having an office in the city of Columbus shall be eligible to become a public depository of the active deposits of public moneys of the state; and in case the aggregate amount of active deposits of the public moneys of the state applied for by such eligible institutions is less than the aggregate maximum amount to be deposited as such, as estimated by the state board of deposit, said board may designate as a public depository or depositories of the active public deposits of the public moneys of the state, one or more institutions of the kind mentioned in section 4 [G.C. § 2296-4] of this act, which are conveniently located, subject to the requirements of this act."

Those provisions remained in effect, except for the codification in the Revised Code, until 1968, when the current provision, supra, was adopted (132 Ohio Laws, 93, et seq.).

No intensive or extensive analysis or argument is required to reach the conclusion that the policy of the state has been

to retain active deposits in eligible Columbus banks when possible.

If anything more is required, it is found in the restriction added in 1937. As pointed out above, the phrase concerning funds not placeable in Columbus was added, requiring that they be placed in "conveniently located" depositories instead of (as theretofore) being placed in depositories anywhere "within the boundaries of the state". Notwithstanding the rapidity of communication and the flexibility of the banking system, such restrictive phrase cannot be construed as a term of art with meaning clear only to banking experts but must be considered in its normal connotation, of geographic "convenience". Thus, geographic convenience to the capitol appears to have been the purpose expressed. It follows that Columbus, being most convenient, and other relatively nearby centers were established as the locations for active fund depositories.

As is apparent from the foregoing, deposit of active funds outside of Columbus may be or become necessary as a matter of fact, in which event the statute authorizes the deposit of such funds elsewhere. Since that element of fact cannot be determined before it occurs, there is no basis for refusing applications for deposit of active funds from any otherwise eligible depository.

Before concluding, I want to point out that my opinion is not concerned with the policy question, in light of current banking practices, of whether such funds should be retained in Columbus or distributed throughout the state. Such policy question is not within my province but is a matter for the General Assembly. I am merely interpreting the law as it is currently written.

In specific answer to your question, it is my opinion that:

1. Active deposits of the state must be kept in Columbus banks, to the extent such banks are otherwise eligible and to the extent applications are made by such banks for "active deposits" of the state.

2. No basis exists for refusing applications from otherwise eligible institutions wherever located within the state, to become active fund depositories.