the designated depositories, by providing that security shall be taken therefor, and has expressly provided the kind of securities which the depositories must give. Likewise, the legislature has provided for the securing of funds in the custody of the several county officers, which are not in the county depositories by requiring such officers to give bond therefor.

In each instance the commissioners are charged with the duty of determining the sufficiency of the security covered by the bond.

The legislature itself, by providing for the giving of bonds by the several county officers, and the giving of bonds or the deposit of securities by county depositories, has fixed the manner by which the county shall be secured with reference to its monies and has not authorized the commissioners or any other officials to provide any other or additional means of security for said funds. The commissioners are merely ministerial agents in carrying out the will of the legislature in this respect, except in so far as they are authorized to exercise their judgment in passing on the sufficiency of the bonds tendered.

In the light of the foregoing discussion, and that contained in my former opinion Nos. 527 and 555 supra, and the authorities therein cited, I am unable to agree with the decision of the Funderburg case, supra, in so far as it upholds the authority of county commissioners to expend county funds for the purpose of purchasing insurance against the loss of public funds in the hands of county officers by robbery or burglary.

The decision of Judge Krapp, in so far as the same was affirmed by the Court of Appeals of the second judicial district, is the law of that district, however, and administrative officers in said district are entirely justified in following the rule laid down by the Court of Appeals unless, and until, said rule be reversed by a court of equal, or superior authority.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1222.

DEPOSITORY BOND—MAY BE GIVEN BY BANK AS SECURITY FOR FUNDS OF BOARD OF EDUCATION—INTERPRETATION OF LEGISLATIVE ACT—SECTIONS 7605 AND 7607, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *When a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education, secure the deposits of public funds by the giving of a good and sufficient bond, or the deposit of the classes of securities enumerated in Sections* 7605 *and* 7607, *General Code, as amended by the* 87*th General Assembly.*

2. *Where the language of a legislative act is ambiguous on its face, to determine its proper interpretation, resort may be had to the history and progress of the bill, which finally ripened into the act, during its pendency in, and passage by, the general assembly, as shown by the journal of the two houses of that body.*

COLUMBUS, OHIO, October 31, 1927.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

"Section 7605 pertaining to school district depositories, as printed in the laws passed by the present General Assembly, provides in regard to the bank or banks chosen as depositories that 'Such bank or banks shall give a sufficient bond, or other interest bearing obligation of the United States, etc.' In the latter part of the section the wording which includes the word 'bond' is

'The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond.'

As this section stood before amendment the wording in the first quotation above was

'Such bank or banks shall give a good and sufficient bond, or shall deposit bonds of the United States, etc.'

The purpose of the amendment of the section appears to have been to redefine and extend the kinds of bonds which might be *deposited* and was not to prevent the giving of *a bond*, that is to say an indemnifying bond with either private sureties or a surety company.

In Section 7607 again, which covers the same matter with regard to school districts with less than two banks the revised statute runs.

'Such bank or banks shall give good and sufficient bonds or other interest bearing obligations of the United States, etc.'

This was a change from wording similar to that formerly in Section 7605.

Boards of education and banks need to know and we are asking in order to clear this matter up whether depositories contracted with in the future may still satisfy the requirements of the law by *giving bond*, or whether they are under the necessity of depositing bonds or securities because of the wording of these sections and of Section 2288-1. As House Bill 388 was introduced, Section 7605 and 7607 both followed the old wording

'Such bank or banks shall give (a) good and sufficient bonds, or shall deposit bonds of the United States, etc.'

No amendment in the journal seems to show authority for leaving out any of these words and it would appear that by accident there was omitted from Section 7605 after the comma after 'bond' the words 'or shall deposit bonds' and that there was omitted from Section 7607 after the word 'sufficient' the words 'bond, or shall deposit.'

We ask whether, in view of the present wording, the context, the related statutes, and the history of these sections during the session of the 87th General Assembly, the security given by a depository may be such a bond with individual sureties or bond of a surety company as has been the custom and law."

Sections 7605 and 7607, General Code, relative to the selection of depository banks for school districts and the securing of the public funds deposited therein were amended by the 87th General Assembly in House Bill No. 388 (112 O. L. 195.)

These sections, as they were in enrolled House Bill No. 388, when signed by presiding officers of the House of Representatives and the Senate, in which form they were published, read as follows:

Sec. 7605. "In school districts containing two or more banks such deposit 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 the funds or any part thereof are on deposit. Such bank or banks shall give a good and sufficient bond, or other interest bearing obli-

gations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of the State of Ohio, or county, municipal, township or school bonds issued by the authority of the State of Ohio, or notes issued under authority of law by any county, township, school district, road district or municipal corporation of this state, or farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum not less than the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond. But no contract for the deposit of school funds shall be made for a longer period than two years."

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. Such bank or banks shall give good and sufficient bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia, bonds of the State of Ohio, or county, municipal, township or school bonds issued by the authority of the State of Ohio, or notes issued under authority of law by any county, township, school district, road district or municipal corporation of this state, or farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum at least equal to the amount deposited.

The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks, and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond."

When the bill was first introduced in the House, the second sentence of Section 7605, General Code, read as follows:

"Such bank or banks shall give a good and sufficient bond (or shall deposit Bonds) *of the United States*, the State of Ohio, or county, municipal, township or school bonds issued by the authority of the State of Ohio or notes issued under authority of law of any county township, school district, road district or municipal corporation of this State or farm loan bonds issued under the provisions of the act of congress known as the Federal Farm Loan Act approved July 17, 1916, and amendments thereto at the option of the board of education in a sum not less than the amount deposited." (Italics and parenthesis the writer's.)

The second sentence of Section 7607, General Code, as it read in House Bill No. 388 when first introduced in the House read as follows:

"Such bank or banks shall give good and sufficient (bond or shall deposit) bonds *of the United States*, the State of Ohio, or county, municipal, township or school bonds issued by the authority of the State of Ohio, or

notes issued under authority of law by any county, township, school district, road district or municipal corporation of this state, or farm loan bonds issued under the provisions of the act of Congress known as the federal farm loan act approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum at least equal to the amount deposited." (Italics and parenthesis the writer's.)

Through an error in first printing the bill, the words, "bond or shall deposit" as contained in the second sentence of Section 7607, General Code described by parenthesis in the above quotation were omitted. This omission was overlooked and the bill was engrossed and finally enrolled with these words omitted.

The language of Section 7605, General Code, as contained in the bill when originally enacted, with certain amendments hereinafter referred to not pertinent to the question before us was not changed in either the first printing of the bill or when the bill was engrossed. When the bill was enrolled however, the printer again made an error, and omitted the words "or shall deposit bonds" (within the parenthesis above) from the second sentence of said Section 7605.

The history of House Bill No. 388, as shown by the journals of the House of Representatives and the Senate, discloses that the bill was introduced in the House on February 21, 1927. On March 16, 1927, after second reading, it was referred to the "banks committee." On March 31, 1927, the banks committee having had the bill under consideration, reported it back with certain amendments, and recommended its passage when so amended.

The journal of the House shows that the amendments made by the committee, in so far as they affected Sections 7605 and 7607 of the General Code, were as follows:

"In both Sections 7605 and 7607, General Code, as quoted above, strike out the words 'of the United States' (Italics above) and insert in lieu thereof 'or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of:"

The amendments were agreed to, the bill was ordered to be engrossed and read the third time in its regular order. The bill was engrossed in accordance with the amendments proposed, and on April 14, 1927, it was read the third time in the House, and passed. On the same day, April 14, 1927, it was received by the Senate, read the first time, read the second time by title, referred to the committee on banks and trust companies, reported back from the committee without amendment and its passage recommended. The report of the committee was accepted, and it was ordered to be read the third time, in its regular order.

On April 21, 1927, it was read the third time in the Senate, passed, enrolled and signed by both the Speaker of the House and President of the Senate. It was approved by the Governor on May 2, 1927, and became effective August 1, 1927.

From the legislative history of House Bill No. 388, it appears that said bill as originally introduced, contained in Section 7605, General Code, the words "or shall deposit bonds" following the first "bond" in the second sentence, and Section 7607, General Code, contained the words "bond or shall deposit" following the word "sufficient" in the second sentence. This is evidenced by the typewritten copy of the bill on file in the office of the Clerk of the House of Representatives.

It is likewise apparent, that at no time in the course of its consideration and passage by either house, was it amended by striking out these aforesaid words "bond or shall deposit", in Section 7607, supra, and it having been overlooked, these words were omitted in the bill as finally enrolled and published. In Section 7605, General

Code, the words "or shall deposit bonds" were properly printed in the engrossed bill but were omitted in the bill as enrolled and published.

So far as Section 7605, General Code, is concerned, there can be no question but that the omission in the final enrollment and publication of the bill, was the result of an error on the part of the printer, and that so far as the legislature was concerned, the bill passed as it was engrossed.

With respect to Section 7607, General Code, a different situation presents itself. The error in engrossing the bill might have been corrected by the legislature before its third reading and final passage, and before enrollment. In either case, correction might have been made if desired, before signature by the Governor and the final publication of the bill, and even though it is apparent that both omissions were the result in the first instance, of a mistake in printing, the question in its last analysis is whether in view of the fact that the bill might have been reconsidered even after enrollment (*Beyer et al.*, vs. *Burness*, 67 O. S. 500; as explained in *Ritzman* vs. *Campbell*, 93 O. S. 260), the omission might have been reinserted and these omissions can be said to be the result of inadvertence or the result of design on the part of the law-making authorities themselves.

What we are concerned with at this time, is the proper interpretation of these statutes as they appear in the enrolled bill on file in the office of the secretary of state, which in this case are the same as they are printed in the published volume of legislative acts, passed by the 87th General Assembly (112 O. L. 197), and whether or not in arriving at that proper interpretation we may look to the journals of the two houses to determine the legislative intent.

So far as the State of Ohio is concerned, the law is well settled by the decision of the supreme court in the case of *Ritzman* vs. *Campbell*, 93 O. S. 246, that the journals of the legislative assemblies can not be used to show that the contents of a legislative act is different from that of an enrolled bill. In the Campbell case, it appeared that an act of the legislature which amended Section 486-8, General Code, relating to the classified and unclassified civil service, read when passed by the legislature, as shown by the journal, as follows:

> "(a) The unclassified service shall comprise the following positions * * *.
>
> 3. The members of all boards and commissions and heads of principal departments, and bureaus appointed by the governor or by and with his consent."

whereas, for some unexplainable reason, the bill as enrolled, read:

> "(a) The unclassified service shall comprise the following positions:
>
> 3. Members of all boards and commissions and heads of principal departments, boards and commissions appointed by the governor or by and with his consent."

The second branch of the syllabus in the case of *Ritzman* vs. *Campbell*, supra, is as follows:

> "Such enrolled bill, so authenticated, is conclusive upon the courts as to the contents thereof, since the attestation of the presiding officers of the general assembly is a solemn declaration of a coordinate branch of the state government that the bill as enrolled was duly enacted by the legislature."

In the course of the opinion, the court points out the irreconcilable conflict among the courts of last resort in the several states, with reference to this question, and after reviewing the cases in Ohio, the court says:

"An examination of these several cases justifies the contention at once that Ohio is not to be classed with the supreme court of the United States, nor with the several states that have gone so far as to hold that the authentication of a bill in constitutional form renders a bill immune from any and all attacks, but it does not justify the assertion that Ohio is to be ranked with those other states that have held that the journals of the two houses of the general assembly control in all respects, nor that the contents of a bill so duly authenticated can be brought into question by the mere disclosure from the journals of some difference in language even of a substantial nature."

The principle embodied in the decision of the Campbell case, supra, is simply that the journals of the House and Senate and other documents tending to show the contents of a measure which has been enacted into law are not proper evidence to prove such contents, but did not go so far as to say that the history of legislation and the journals of the law-making body might not be resorted to, to determine the intent of the legislature when that intent was not clear from the language used. The enrolled bill, when signed by the presiding officers of both houses, as required by the Constitution, speaks for itself, and can not be impeached, so far as its contents is concerned, by a showing that the contents of the measure as actually voted on and passed, was different than that contained in the enrolled, signed, and published bill.

The court did not have under consideration the question of the construction of the language of the measure or its interpretation for the purpose of determining the legislative intent. The language was plain and unambiguous, and did not require resort to rules of construction or interpretation of the language to arrive at the legislative intent.

It is a rule of universal application repeatedly declared by the Supreme Court of Ohio, that if there be no ambiguity or uncertainty in the meaning of the language employed in a statute, there is no place for judicial construction. As stated in the case of *Slingluff, et al.*, vs. *Weaver, et al.*, 66 O. S. 621, the first two sections of the syllabus read:

"The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacted it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the language may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.

But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

Whatever the law on this subject may be, in other jurisdictions it is well settled in Ohio by the case of *Ritzman* vs. *Campbell*, supra, that if the language of the two sections of the code, under consideration, as enacted in House Bill No. 388, supra, is clear, resort can not be had to the journals of the General Assembly to supply inadvertent omissions caused by errors in printing, no matter what such journals may disclose as to the intent of the legislature.

The language however, is not clear. The language of both Sections 7605 and 7607, General Code, as contained in enrolled House Bill No. 388, supra, calls for in-

terpretation and construction, to be intelligible. Boards of education and depository banks throughout the state are at a loss to know whether or not as the law now reads, the security given by depositories for school funds may be the giving of a bond, or must be the deposit of certain securities. What has always been understood by the giving of a bond, is the execution and delivery to the person to be secured, of an undertaking signed by proper sureties, while the handing over of securities in the nature of a pledge, to be held as protection against liabilities, has universally been spoken of as the deposit of securities, and not the giving of the securities. Yet the word "deposit" is not found in either of the sections referred to.

Without enlarging on the manifestly incoherent language of the statute, it is sufficient to say that it is so ambiguous as to call for judicial construction, in order to determine its true meaning. The very fact that you have submitted this inquiry, and that it has been prompted by inquiries from administrative officers throughout the state, would be some slight evidence of the uncertainty of the meaning of the language used in these two sections of the Code.

Without reviewing the history of the legislation pertaining to the deposits of the funds on public school districts, it is sufficient to say that when legislation was first enacted providing for the selection of depositories, it was provided that such depositories were required to secure the deposits by the giving of a bond. Later, provisions were made whereby the depositories might secure the funds by either the giving of a bond or the deposit of certain securities. From time to time amendments were made, enlarging the classes of securities that might be deposited for this purpose. At least one of the manifest purposes of the amendments included within House Bill No. 388, supra, was to enlarge the classes of securities that might be deposited by the addition of other classes of federal securities not technically included within the term "bonds of the United States", and "notes issued under authority of law by any county, township, school district, road district or municipal corporation of the state."

No events of contemporary history would seem to indicate a demand for a change from this system, and if we may be permitted to look to the legislative history of House Bill No. 388, itself, and give effect to what appears to have been the manifest intent of the legislature, it is clear no change in this respect was intended. The only question is how far such legislative history, as shown by the journals of the General Assembly, may be used to influence our determination of what the proper interpretation of the act really is. It is stated in Black on Interpretation of Laws, Section 91:

> "When a resort to extrinsic evidence becomes necessary in the construction of a statute, it is proper to consider the facts of contemporary history, the previous state of the law, the circumstances which led to the enactment, and especially the evil which it was designed to correct, and the remedy intended."

And again, in Section 96, the same author says:

> "In aid of the interpretation of an ambiguous statute, or one which is susceptible of several different constructions, it is proper for the courts to study the history of the bill in its progress through the legislature, by examining the legislative journals."

In an early case in Ohio, *State of Ohio, ex rel. Fosdick* vs. *Village of Perrysburg*, 14 O. S. 472, Judge Brinkerhoff, in considering this subject, says:

> "In cases of doubt as to the proper interpretation of wills and contracts, it is a familiar rule that evidence is admissible to show the circumstances surrounding the party, or parties, at the time of the making of the instrument

to be interpreted; and thus to place the court upon the standpoint of the party or parties whose intentions are to be ascertained; and to enable the court to see things in the light in which he or they saw them. And, on principle, I know of no good reason why on a question like this, we may not, in analogy to the rule referred to, look into the history and progress of the bill which finally ripened into this act, during its pendency in, and passage by the general assembly, as shown by the journal of the two houses of that body."

In the light of the foregoing discussion, I am of the opinion that when a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education, secure the deposits of public funds by the giving of a good and sufficient bond or the deposit of the classes of securities enumerated in Sections 7605 and 7607, General Code, as amended by the 87th General Assembly.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1223.

COUNTY RECORDER—SALARY—COMPENSATION FOR OTHER LINES OF ENDEAVOR.

SYLLABUS:

A county recorder is entitled to the salary provided for the office to which he has been elected and for which he has qualified, so long as he retains title to the office, even though he devotes his entire time to other lines of endeavor. The proceeds flowing from the other lines of endeavor to which a county recorder devotes his time and attention rightfully belong to such officer personally, and he is not required to account for the same to the county.

COLUMBUS, OHIO, October 31, 1927.

HON. GEO. E. SCHROTH, JR., *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

"Is it permissible for a county recorder to hire his regular duties performed by a special deputy who is paid from the county treasury and for the official to devote his entire time to other lines of endeavor without turning the proceeds from those other lines into the county treasury, or do such other proceeds rightfully belong to the official personally?"

Sections 2750 and 2754, General Code, read as follows:

Sec. 2750. "There shall be elected in each county, at the regular election in 1926, a county recorder, who shall assume office on the first Monday of September next after his election and who shall hold said office for a period of three years and four months or until the first Monday of January, 1931. There shall be elected in each county, at the regular election in 1930, and biennially thereafter, a county recorder who shall assume office on the first