

In view of the fact that the Legislature has placed this limitation upon all refunding bonds under this section, clearly there is no authority for the issuance of general tax bonds as refunding bonds when the issue sought to be refunded is one of mortgage bonds.

It is my opinion, therefore, in answer to your first question, that mortgage bonds may be refunded under the provisions of Section 2293-5 of the General Code, but such bonds may only be refunded by mortgage bonds.

In answer to your second question, it follows that the principal and interest on such refunding bonds may be secured only by the pledge of the revenues and property of such utility.

Respectfully,
GILBERT BETTMAN,
Attorney General.

54.

BANKS—UNINCORPORATED—MAY BE DEPOSITARIES OF COUNTY FUNDS.

SYLLABUS:

By virtue of the provisions of Sections 710-84 and 2715 of the General Code, unincorporated banks are eligible to bid for, and be designated as depositaries of, county funds.

COLUMBUS, OHIO, February 4, 1929.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of January 17th, 1929, reading as follows:

“The question has arisen here as to who has the right to bid on the active and inactive deposits of county funds, and I would like to have your opinion on that question, based on the statutes, as they now seem to be somewhat contradictory.

Section 2715, G. C., which deals exclusively with depositaries for county funds, provides:

‘The commissioners in each county shall designate in the manner hereinafter provided a bank or banks or trust companies, situated in the county and *duly incorporated under the laws of this state, or organized under the laws of the United States*, as inactive depositaries, and one or more of *such* banks or trust companies, located in the county, at least one of which shall be located at the county seat as active depositaries of the money of the county. In a county where such bank or trust company does not exist or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositaries, the commissioners shall designate a private bank or banks located in the county as such inactive depositaries, and if in such county no such private bank exists, or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositaries, then the commissioners shall designate any other bank or banks incorporated under

the laws of this state, or organized under the laws of the United States, as such inactive depositaries. * * *'. (Italics the writer's).

Section 2715-1 provides for the time the deposits are to remain.

Section 2716 provides for publication inviting sealed proposals, and sets out particularly the ones who can be invited to make bids, as follows:

'When the commissioners of a county provide such a depositary or depositaries, they shall publish for two consecutive weeks in two newspapers of opposite politics and of general circulation in the county, a notice which shall invite sealed proposals from *all banks or trust companies within the provisions of the next two preceding sections, * * *'* (Italics the writer's).

Section 2715, as it now stands was enacted, as amended, on March 22, 1921, and was approved April 8, 1921 (See Vol. 109, Page 71, O. L.).

There is another section in the act relating to Superintendent of Banks,—Section 710-84,—which reads as follows:

'Section 710-84. Whenever any of the funds of the state, or any of the political subdivisions of the state shall be deposited under any of the depositary laws of the state, *every unincorporated bank* shall be permitted to bid upon and be designated as depository of such funds, upon furnishing such surety or securities therefor as is prescribed by law.' Italics the writer's). See Vol. 108, pt. 1, page 80.

What I desire to know is whether under these sections, an unincorporated, or private bank, can bid for, and be awarded the county funds, as depository, notwithstanding the banks and trust companies of the character and kind expressly designated in Section 2715, exist in the county, and are of the class which bars private banks under the express provisions of that chapter, provided there are such incorporated and organized banks in the county, and which bid as provided in said Section 2715, and otherwise comply with the provision of law.

There seems to be an opinion of the Attorney General noted under Section 710-84, to which I have not access, being cited as in Attorney General's Opinions, 1927, page 1476. Whether that opinion attempts to reconcile the two sections, I do not know.

I would like an opinion as to whether, under these two sections unincorporated banks have a right to bid and be accepted as depositaries of county funds, taking into account the two sections, and the fact as to the time of the passage of each, and also taking into consideration the notice by publication which is provided for by Section 2716, G. C."

Section 710-84, supra, was enacted in its present form on April 11, 1919, as a part of "An Act Revising and Codifying the Laws Relating to the Organization of Banks and Inspection Thereof" (108 v. pt. 1, page 80).

The effect of the provision of the section is to place all banks and trust companies coming under the supervision of the State Banking Department and all national banks on a par, insofar as their eligibility to bid for public funds of the state or any political subdivision is concerned. It follows, therefore that those provisions of Section 2715, G. C., limiting county commissioners and designating depositaries of public funds to banks and trust companies organized under the laws of Ohio and the United States, were repealed by implication by the later enactment of Section 710-84, G. C., insofar as any inconsistency existed, Section 2715, G. C., having been enacted March 11, 1911. Section 2715 G. C. has once been amended subsequent to the passing of Section 710-84 G. C., when the word "seat" was stricken from the statute, and the words "at least one of which shall be located at the county seat" inserted, so as to permit banks and trust companies located in any part of the county other than the

county seat to bid for such contracts. In the light of this amendment, it remains to be determined whether the provisions of Section 710-84 are still controlling.

This question has been considered by this department on several other occasions. See Opinions of the Attorney General, 1915, Vol. I, page 66; Vol. II, page 1279; Vol. III, page 2065, and Attorney General's Opinions, 1927, Vol. II, page 1476.

There is no doubt but that Section 710-84, G. C., and Section 2715, G. C., are conflicting statutes; however, in the consideration of conflicting provisions in the statutes, the object to be kept in view is to ascertain the legislative intent. The Supreme Court of Ohio, in the case of *Cochrel vs. Robinson*, 113 O. S., page 527, in the fourth paragraph of the syllabus, commenting on statutory construction, says:

"In the construction of a statute, the primary duty of the court is to give effect to the intention of the Legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained."

The question here to be determined is what effect did the amendment of Section 2715, G. C., supra, of March 22, 1921, have on the law as it then existed, permitting private banks to be depositaries of public funds.

My predecessor, in an opinion in 1927, Vol. II, page 1478, commenting on this question, held:

"It is axiomatic that the object of statutory construction is to ascertain and give effect to the intention of the legislature. It is also a fundamental rule that all statutes are presumed to be enacted by the legislature with knowledge of the existing condition of the law and with reference to it. See 36 Cyc. 1146.

While by the act passed on March 22, 1921 (109 v. 71), the original Section 2715 was repealed and the new section enacted in its entirety, what the legislature actually did was merely to amend the section as will hereinafter appear. It is provided by Section 16, Article II, of the Constitution of Ohio, that 'No law shall be * * * amended unless the new act contains the entire act * * * or the section or sections amended.'

The title of the act of March 22, 1921, is:

'An Act—To amend Section 2715 of the General Code of Ohio so as to enlarge the limitation placed upon the deposit of county moneys.'

The first sentence in Section I of the act reads: 'That Section 2715 of the General Code of Ohio be amended so as to read as follows:'

As above stated it must be presumed that at the time of the passage of the act of March 22, 1921, the General Assembly had knowledge of the effect of Section 710-84, supra, and of the existing condition of the law. As plainly expressed in the title of said act the purpose of the amendments therein made was 'to enlarge the limitation placed upon the deposit of county moneys' and not to narrow the same. It seems clear that the intent of the legislature, as shown by the enactment of the section in its identical terms with the exception of the changes above pointed out and by the title of the act, was not to make any change as to the eligibility of banks which might be designated as depositaries for public funds but only to change the requirement that active depositaries be located in the county seat to the provision that at least

one of the active depositaries must be so located, thus permitting banks in the county outside the county seat to bid, * * * *”

The conclusion of my predecessor upon this point is based upon the same principles of statutory construction as have already been enunciated by the Supreme Court of Ohio in the cases of *In re Allen*, 91 O. S. 315 and *In re Hesse*, 93 O. S. 230. I concur in the reasoning expressed in the opinion from which I have quoted.

I am, therefore, of the opinion that, by virtue of Section 710-84, G. C. and Section 2715, G. C., unincorporated banks are eligible to bid for, and be designated as depositaries of, county funds and that unincorporated banks are privileged to bid for such a contract when bids have been advertised for by virtue of Section 2716, G. C., supra.

Respectfully,

GILBERT BETTMAN,
Attorney General.

55.

MOTOR VEHICLE—ALTERATIONS—CORRECTIONS ON BILL OF SALE
REQUIRED ONLY WHEN SUCH VEHICLE IS SOLD OR TRANS-
FERRED.

SYLLABUS:

Neither the Commissioner of the Bureau of Motor Vehicles, nor the clerk of the Common Pleas Court has any authority to require any correction to be made in a bill of sale by which a motor vehicle is owned and held, or in the copy thereof on file with the clerk of the Common Pleas Court, by reason of the fact that the owner of such motor vehicle has installed a new motor therein or has made other installations, changes or alterations in such motor vehicle, as long as he continues to own, possess and use the same; but upon the sale or other transfer of such motor vehicle, the owner thereof is required to insert in the bill of sale executed by him a statement of such installation or of other changes and alterations in the finish, design or appearance of such motor vehicle which have been made within his knowledge.

COLUMBUS, OHIO, February 4, 1929.

HON. CHALMERS R. WILSON, *Commissioner, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, which is as follows:

“This department receives numerous inquiries as to the proper manner of complying with the Bill of Sale Law when a change, such as installing a new motor block, is made in a motor vehicle.

Under the Ohio Law the clerk of courts is the responsible official for the correctness of Bills of Sale accepted for filing and in reply to such inquiries it is the policy of this department to advise that such corrections as are required by the clerk of courts should be made on the Bill of Sale. Our advice is given in this manner for the reason that there being no state