

Still assuming that the banks in question are insolvent, this principle does not make the payment of public deposits upon the release of ample security, a preference. There is in fact no prejudice to other creditors and no intent to prefer or defraud them.

I am therefore of the opinion that no unlawful preference will be created by a payment of public deposits by a Federal Reserve Member Bank, not yet authorized to perform normal banking functions. Where collateral securities in excess of the deposit are released by the depositor to the bank.

It appears from your request that the banks are not asking your approval of withdrawals where the deposit is secured by a surety bond or where the value of the collateral securities does not exceed the amount of the deposit. I therefore express no opinion as to your authority to permit withdrawals in such cases.

I note from the transcript of public deposits in the Union Trust Company submitted with your request, that there are several deposits secured both by a surety bond and by a deposit of securities. A deposit of \$1,500,000 might be secured by a bond of \$1,000,000 and securities valued at \$1,000,000. Relying upon the bond, the depositor might withdraw \$500,000 of the deposit and relinquish all of the securities. By this act, the surety would be released to the extent of his injury from this action. Had the withdrawal not been made, the surety in this case could have paid the \$1,000,000 and become entitled to the rights of subrogation in the security. This illustrates the danger of permitting withdrawals where there is a surety for part of the deposit. I assume that the statement in the letter attached to your request that your permission to allow withdrawals is not being asked where there is a surety, includes cases where only part of the security is a surety bond, the rest being collateral.

Specifically answering your inquiry, I am of the opinion that under Regulation 32 of the Secretary of the Treasury, a State bank which is a member of the Federal Reserve System, operating in a limited way, whether under the control of a conservator or not, may permit withdrawals of public deposits secured wholly by collateral securities in excess of the amount of the deposit.

Respectfully,

JOHN W. BRICKER,
Attorney General.

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APPROVAL, NOTES OF JACKSON RURAL SCHOOL DISTRICT,
JACKSON COUNTY, OHIO, \$2,810.00.

COLUMBUS, OHIO, April 21, 1933.

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

655.

APPROVAL, NOTES OF NASHVILLE RURAL SCHOOL DISTRICT,
HOLMES COUNTY, OHIO—\$2,473.00.

COLUMBUS, OHIO, April 21, 1933.

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