

3934.

APPROVAL, BONDS OF CITY OF IRONTON, LAWRENCE COUNTY,  
OHIO—\$9,000.00

COLUMBUS, OHIO, January 9, 1932.

*Industrial Commission of Ohio, Columbus, Ohio.*

3935.

BOND—SECURING COUNTY DEPOSITS—MAY BE MODIFIED BY A  
RIDER, PROVIDED IT COVERS SUM THEN ON DEPOSIT.

## SYLLABUS:

*When deposits in a county depository bank or trust company are secured by the bond of a fidelity or indemnity insurance company, and those deposits are increased or diminished, the depository may lawfully attach a rider to said undertaking, whereby it is provided that the said undertaking shall be held as security for an amount only, which is not less than the sum then on deposit, or an amount which, together with other securities duly and legally hypothecated, shall be not less than the sum on deposit after the same has been increased or diminished, as the case may be.*

COLUMBUS, Ohio, January 9, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The county commissioners have asked this office to construe Section 2724 of the General Code in connection with the reduction of bonds for county deposits in certain banks. The surety company rates have been increased twice in the past months and the companies have been increasingly unwilling to write this kind of business on account of the numerous bank failures in various parts of the country. On all new bonds they now charge \$12.50 per thousand instead of the last rate of \$7.50 per thousand and when the banks furnish collateral to secure part of the deposits formerly covered by a single bond, the companies refuse to issue the new and smaller bond under the old rate, although the risk is smaller and concerns itself with the identical parties.

The surety company agents are willing, however, to continue the bonds at the old rate provided they are allowed to attach a rider to the bond reducing the risk to the smaller amount to be secured. The question, therefore, is whether the county commissioners can lawfully agree to accept such a rider and if the surety company will be bound for the smaller amount.

Section 2724 G. C. provides that a bond must remain in effect until the last cent of deposit is withdrawn from the bank, unless of course, the surety company frees itself under the provisions of other sections

of the chapter. This section speaks repeatedly of a 'new' undertaking to replace the surrender of the old. The succeeding section 2725 also uses the word 'new' in connection with substituting securities. I am inclined to believe that a strict technical construction would preclude the reduction in the amount of a surety company bond by a rider to that effect because it would not be a strictly new undertaking. Yet I doubt that any court would relieve a surety company of liability upon such a defense being made, nor is it unreasonable to suppose that the execution of a rider assented to by the Commissioners would not be in effect an alteration of the contract and therefore constitute a new contract or undertaking between the parties."

With reference to an undertaking which may be given to secure the deposits made by county commissioners in a county depository bank or trust company, it is provided by Section 2724, as follows:

"Such undertaking shall be continuous in form and, except as herein-after provided, shall remain in full force as to any and all deposits secured by it until the same have been withdrawn in total, including all interest thereon, provided, that in case the deposits shall be increased or decreased the depository may furnish and substitute for said undertaking a good and sufficient new undertaking not less than the sum then on deposit or in an amount which together with securities duly and legally hypothecated shall be not less than the sum so on deposit; and any depository which has furnished more than one undertaking for any deposit may, upon such deposit being reduced, obtain the release and surrender of any undertaking as herein provided if there remain in force to secure said deposit an undertaking or undertakings, and securities, or either, not less than the sum then on deposit. The county commissioners by resolution spread on their journal may release any undertaking and surrender the same to the depository upon the withdrawal in total of any deposit, or upon the reduction of any deposit and upon the furnishing and acceptance of any new undertaking or securities substituted therefor, as herein provided."

I assume, for the purposes of this opinion, that the circumstances which prompted your inquiry, are such as are contemplated by the statute, wherein it provides that a new undertaking may be substituted for a former undertaking. That is to say the deposits in question have been decreased, and it is now proposed to attach a rider to the former bond, "reducing the risk to the smaller amount to be secured", as you state. I also assume that the consent of the county commissioners to this substitution will be evidenced by proper resolution spread on their journal, and that the agent about whom you speak is fully authorized by his company to act in the premises.

The only legal question to be determined therefore, as I see it, is whether or not the terms of Section 2724, supra, are met, when a county depository account is increased or diminished if a rider stating the facts and guaranteeing the deposit as so diminished, is attached to the undertaking which had formerly been given.

It is not uncommon to attach to written contracts, slips of paper, commonly called "riders", containing provisions modifying the terms of the contract as contained in the written instrument to which the slips are attached. This is frequently done when printed contracts of a standard form, such as insurance policies,

are involved. It has been quite generally held that these riders, especially when written in long hand, or typewritten, instead of being printed, will control the interpretation of the contract rather than the terms of the printed form to which they are attached. *Brazilian Export & Import Co. vs. Fireman's Fund Insurance Company*, 174 N. Y. S., 265, *Old Colony Life Insurance Company vs. Hickmon*, 315 Ill., 304.

After considerable search, I have found no decided cases involving the question of the effect of these riders when attached to a contract after it has been partly executed. It seems reasonable, in my opinion, that the attaching of a rider to a contract after the contract has gone into effect, and even after it has been partially executed, amounts to a modification of the contract in accordance with the terms of the rider, and is to that extent virtually the making of a new contract.

Were it not for the proviso of the statute in question authorizing the substitution of a new undertaking, there is little doubt but that county commissioners could not consent lawfully to the varying of the terms of an undertaking given to secure depository accounts, once it had been given, inasmuch as the statute provides that the undertaking shall remain in full force and effect until the deposits secured thereby are withdrawn in total. The statute, however, specifically authorizes the depository to furnish and substitute a good and sufficient new undertaking when deposits have been increased or diminished, to secure those deposits under the changed conditions, and it is my opinion that the attaching of a rider, with the consent of all parties, to a former undertaking, is virtually the substitution of a new undertaking. The word "new" should not be construed in a technical sense, as it is not necessary to do so to carry out the object of the provisions of the statute, in which it is used.

I am therefore of the opinion that when deposits in a county depository bank or trust company are secured by the bond of a fidelity or indemnity insurance company, and those deposits are increased or diminished, the depository may lawfully attach a rider to said undertaking, whereby it is provided that the said undertaking shall be held as security for an amount only, which is not less than the sum then on deposit, or an amount which, together with other securities duly and legally hypothecated, shall not be less than the sum on deposit after the same has been increased or diminished, as the case may be.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3936.

APPROVAL, BONDS OF VILLAGE OF MIDDLEBURG HEIGHTS, CUYA-  
HOGA COUNTY, OHIO—\$53,000.00.

COLUMBUS, OHIO, January 9, 1932.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*