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SYLLABUS:

Where only one institution of the type mentioned in Section 135.04, Revised Code, submits a bid to be designated depository of the inactive funds of a school district, the board of education of that district may entertain bids from other institutions mentioned in Section 135.04, Revised Code, which are conveniently located, and is not incorrect in making the designation as depository of an institution conveniently located, notwithstanding its being located outside the school district if that institution is otherwise acceptable and in conformity with Sections 135.01 through 135.23, Revised Code.

Columbus, Ohio, December 23, 1963

Hon. Donald D. Simmons
Prosecuting Attorney
Wood County
Bowling Green, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Prior to 1963 the Lake Township Local School District, Board of Education, has used the Farmers Savings Bank in the Great Eastern Shopping Center, Ross Township, Wood County, Ohio, which is now located in the Village of Northwood, Ohio, as a depository for their funds. This was done on the basis that there was no banking institution in the school district, and that the Farmers Savings Bank was conveniently located for them. During this year, however, the Exchange Bank of Luckey, Luckey, Ohio, has opened a branch in Walbridge, Ohio, which is within the Lake Township School District. The Board of Education instructed the Superintendent of Schools to invite proposals from both financial institutions for a deposit of their inactive funds. Both institutions submitted proposals and the Board accepted the proposal from the Farmers Savings Bank. The Exchange Bank of Luckey, with a branch within the school district, is challenging the legality of the award to the bank outside the district."

It would appear, therefore, that the question posed by your request is whether the Lake Township Local School District may, on the facts stated in your request, designate as depository of its inactive funds, a financial institution not located within the school district.

I take it, from the material you attached to your request, that both the Exchange Bank of Luckey and the Farmers Savings Bank qualify as companies eligible to become public depositories within the meaning of Section 135.04, Revised Code, and are otherwise in accord with Sections 135.01 to 135.23, inclusive, Revised Code, except as hereinafter discussed.

Section 3313.51, Revised Code, provides for the deposit of funds for a school district in a depository, designated by the board of education of the school district, as provided by Sections 135.01 to 135.23, inclusive, Revised Code. Section 135.01(B), Revised Code, includes school districts among the definitions of the word "subdivision" as used in Chapter 135, Revised Code.

Section 135.06, Revised Code, providing for the deposit of subdivision funds, provides in pertinent part:

"Any institution mentioned in Section 135.04 of the Revised Code which has an office located within the territorial limits of a subdivision is eligible to become a public depository of the inactive deposits of public moneys of such subdivision; and in case there is no such eligible institution, or not more than one such other eligible institution, or not more than one such other eligible institution, or in case not more than one such eligible institution applies for designation as a public depository of the inactive deposits of the public moneys of the subdivision, * * * the governing board of the subdivision may designate as a public depository of the inactive public deposits of the public moneys thereof, one or more institutions of a kind mentioned in section 135.04 of the Revised Code, which are conveniently located, subject to the requirements of sections 135.01 to 135.23, inclusive, of the Revised Code."

The balance of Section 135.04, Revised Code, containing a significant difference in the requirement in designating depositories, is inapplicable, since it deals with active public funds—not inactive funds as your question contemplates.

Since it appears that only one such eligible institution (i. e. located within the territorial limits of the school district) has applied for designation as the public depository of the funds in dispute, Section 135.06, Revised Code, permits the board of education to consider the bid of an institution of the kind mentioned in Section 135.04, *supra*, located outside the school district.

In view of the foregoing, I conclude that, where a board of education of a school district receives a bid to be designated depository of its inactive funds from only one bank of the type mentioned in Section 135.04, Revised Code, within its territorial limits, it may consider the bids of other such institutions not located within the school district's territorial limits which are conveniently located. Since the board of education of Lake Township Local School District found itself in this situation, it was not incorrect in considering both the bid of the Farmers Savings Bank and of the Exchange Bank of Luckey, and in accepting the bid of the Farmers Savings Bank notwithstanding its being located outside the Lake Township Local School District, if it is otherwise acceptable and in conformity with Sections 135.01 through 135.23, Revised Code.

Therefore in answer to your specific question, it is my opinion and you are advised that, where only one institution of the type mentioned in Section 135.04, Revised Code, submits a bid to be designated depository of the inactive funds of a school district, the board of education of that district may entertain bids from other institutions mentioned in Section 135.04, Revised Code, which are conveniently located, and is not incorrect in making the designation as depository of an institution conveniently located, notwithstanding its being located outside the school district if that institution is otherwise acceptable and in conformity with Sections 135.01 through 135.23, Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General