

Note from the Attorney General's Office:

1942 Op. Att'y Gen. No. 42-5317 was modified by 1957 Op. Att'y Gen. No. 1957-1269.

5317

1. UNIFORM DEPOSITORY ACT — NO APPLICATION TO UNIVERSITY FUNDS, CUSTODY TREASURER, KENT STATE UNIVERSITY.
2. NO STATUTORY PROVISION TREASURER SHALL DEPOSIT SUCH FUNDS IN ANY BANK — ANY SUCH DEPOSIT MADE BY HIM, SUBJECT TO HIS OWN RISK AS TO FUNDS DEPOSITED AS WELL AS ANY COLLATERAL OR OTHER SECURITY HE MAY EXACT OR RECEIVE.

SYLLABUS:

1. The Uniform Depository Act has no application to university funds lawfully retained in the custody of the treasurer of Kent State University.

2. There is no statutory provision which authorizes or requires the treasurer of the university to deposit such funds in any bank, and any deposit made by him will be at his own risk both as to the funds deposited and any collateral or other security which he may exact or receive in connection with such deposit.

Columbus, Ohio, July 17, 1942.

Board of Trustees, Kent State University,
Kent, Ohio.

Gentlemen:

I have received a letter from your business manager and assistant treasurer, Mr. O. B. Law, and also copies of the two letters therein referred to, relating to the deposit of university funds and the pledging of collateral to secure such deposits. These documents are quite lengthy, and for that reason will not be incorporated in this opinion.

As I understand it, you desire my opinion on two questions relating to the deposit of university funds lawfully retained in the custody of your treasurer. The two questions may be stated as follows:

1. Does the Uniform Depository Act (Sections 2296-1 to 2296-25, General Code) apply to and govern the deposit of such university funds; and,
2. Shall the collateral pledged to secure the deposit of such

funds be assigned to the treasurer of the university or to your board?

The questions will be considered in the order stated.

1. While university funds legally retained by the treasurer of the university, as distinguished from funds paid into the state treasury or state depository trust fund under Sections 24 and 24-4 of the General Code, may be considered to be public money in the generally accepted sense, it should be borne in mind that the Uniform Depository Act contains its own legislative definition of the words "public moneys" as used in the Act, and also other legislative definitions with respect to the ownership, possession and deposit of such moneys. These legislative definitions, to a certain extent, are purely arbitrary, and are contained in the first section of the Act, Section 2296-1. So far as pertinent they are as follows:

"(a) 'Public moneys' means all moneys in the treasury of the state, or any subdivision thereof, or coming lawfully into the possession or custody of the treasurer of state, or of the treasurer of any such subdivision. 'Public moneys of the state' includes all such moneys coming lawfully into the possession of the treasurer of state; and 'public moneys of a subdivision' includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.

(b) 'Subdivision' means any county, school district, municipal corporation (excepting a municipal corporation or a county which has adopted a charter under the provisions of article XVIII or article X of the constitution of Ohio having special provisions respecting the deposit of the public moneys of such municipal corporation or county), township, municipal or school district sinking fund, special taxing or assessment district or other district or local authority electing or appointing a treasurer in this state. In the case of a school district, special taxing or assessment district or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by or pursuant to law to act as ex-officio treasurer, the subdivision for which such a treasurer has been primarily elected or appointed shall be considered to be the 'subdivision' for all the purposes of this act. Said term also includes a union or joint institution or enterprise of two or more subdivisions, as herein defined, which is not authorized to elect or appoint a treasurer, and for which no ex-officio treasurer is provided by law. * * *

(g) 'Treasurer' includes the treasurer of state and the treasurer, or other officer exercising the functions of a treasurer, of any subdivision and, in the case of a board of trustees of the sinking fund of a municipal corporation, or the board of com-

missioners of the sinking fund of a school district, or a board of directors or trustees of any union or joint institution or enterprise of two or more subdivisions not having a treasurer, such term means such board of sinking fund trustees or commissioners or board of directors or trustees. * * *

(i) 'Governing board' means, in the case of the state, the state board of deposit hereby created; in the case of a county, the county commissioners; in the case of a school district (excepting the county school district), the board of education, and, where the case so requires, the board of sinking fund commissioners; in the case of a municipal corporation, the council, and, where the case so requires, the board of sinking fund trustees; in the case of a township, the township trustees; in the case of a union or joint institution or enterprise of two or more subdivisions not having a treasurer, the board of directors or trustees thereof; and in the case of any other subdivision electing or appointing a treasurer, the directors, trustees, or other similar officers of such subdivision. The governing board of a subdivision electing or appointing a treasurer shall be the governing board of all other subdivisions for which such treasurer is authorized to act."

The gist of these legislative definitions so far as "subdivisions" are concerned is, that public moneys in the treasury of any subdivision shall be deposited by its treasurer in a public depository designated by the governing body of the subdivision.

Under the definitions quoted above it is clear that Kent State University is not a "subdivision" within the meaning of the Act, unless it can first be concluded that the university is a "local authority." If it may be classed as a "local authority," then it would fall within the legislative definition of the term "subdivision."

I can find no Ohio court decision which undertakes to define the words "local authority" as used in the Act, or in similar legislation, and in the absence of such judicial determination I feel justified in adopting the view of former Attorney General Duffy that a state university is neither a "subdivision" nor a "local authority." See Opinions of the Attorney General, 1938, No. 2899, page 1661. In that opinion (Page 1668) it was said:

"In view of the fact that a state university is clearly neither a 'subdivision' nor a 'local authority,' no further discussion is necessary to support the conclusion that funds held by the treasurer of such university and not lawfully in the possession or custody of the Treasurer of State, are not public moneys' within the meaning of the term as defined in the Uniform Depository

Act and accordingly such act contains no provision with respect to their deposit. Nor do I find that the General Assembly has elsewhere enacted any provisions with respect to the deposit or safekeeping of such funds.”

2. As you know, Kent State University, formerly known successively as Kent State Normal School and Kent State College, was established under and pursuant to Acts passed by the General Assembly on May 10, 1910, and May 27, 1915 (101 O.L. 320; 106 O.L. 490; Section 7901-1, et seq., General Code). It was given its present name by the Act passed March 20, 1929 (113 O.L. 34; Section 7924, General Code). One of the sections under which the university was established (Section 7901-4, General Code), and now in force, expressly provides that the board of trustees shall elect a treasurer, and that

“The treasurer, before entering upon the discharge of his duties shall give bond to the state of Ohio for the faithful performance of his duties and the proper accounting for all moneys coming into his care. The amount of said bond shall be determined by the trustees, but shall not be for less sum than the estimated amount which may come into his control at any time.”

An examination of the statutes applicable to and governing Kent State University since its establishment discloses that the legislature has never enacted any law requiring the treasurer of the University to deposit any of the university funds in any bank. This situation was referred to by the former Attorney General in the opinion hereinbefore cited, and also in an opinion of former Attorney General Bettman, which meets with my approval, reported in Opinions of the Attorney General, 1932, No. 4199, page 449. In the latter opinion it was said (pp. 450 and 451):

“I find no statutory provision which authorizes the treasurer of the board of trustees of Kent State College to deposit in any bank the funds of the College, and as the treasurer’s bond is conditioned upon the proper accounting for all moneys coming into his care, the insolvency of the bank in which such funds are deposited would be no defense to any action to recover from the treasurer or his sureties any loss that may result by reason of such insolvency. State, ex rel., vs. Harper, 6 O.S. 608. * * *

The state’s protection is the treasurer’s bond and the liability of the treasurer himself. There is no statutory authority to take other securities to protect the state, and I am therefore unable to say that the securities mentioned by you are any protection ‘under the law,’ so far as the state is concerned.

What, if any, securities such treasurer should take for his

own protection is a matter for him to decide, and whether the mortgages you mention would sufficiently protect him would, of course, depend on the real estate market in the localities where the real estate covered by said mortgages is situated, taking into consideration the reduced price such real estate would probably bring in the event of foreclosure sales. I am not, however, passing upon the question of the right of a bank to give securities to protect such deposits."

For the reasons above stated, it is my opinion that:

1. The Uniform Depository Act has no application to university funds lawfully retained in the custody of the treasurer of Kent State University.

2. There is no statutory provision which authorizes or requires the treasurer of the university to deposit such funds in any bank, and any deposit made by him will be at his own risk both as to the funds deposited and any collateral or other security which he may exact or receive in connection with such deposit.

Respectfully,

THOMAS J. HERBERT
Attorney General.