

mission can accomplish the same result by rule and regulation.

Specifically answering your letter, I am of the opinion that by virtue of the provisions of Section 6212-54, General Code, as amended in Amended Senate Bill No. 380, a class A permittee cannot sell or ship beer manufactured in Ohio from a branch warehouse or from a branch plant wherein beer is only sold and shipped but not manufactured, without first securing a class B permit.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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1677.

MUNICIPAL SINKING FUNDS—TRUSTEES THEREOF CANNOT ACCEPT FIRST MORTGAGES AS SECURITY FOR RETURN OF FUNDS DEPOSITED IN DEPOSITORY CREATED FOR THEIR FUNDS.

*SYLLABUS:*

*Section 2288-1, General Code, does not authorize municipal sinking fund trustees to accept first mortgages as security for the return of funds deposited in a depository created for their funds. (Opinions of the Attorney General for 1929, Vol. I, p. 740, approved and followed.)*

COLUMBUS, OHIO, October 5, 1933.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your letter asking my opinion concerning the following request:

“The question has arisen as to whether banks selected as depositories for funds under the control of the sinking fund trustees of a municipality may secure deposits by the hypothecation of the securities mentioned in section 2288-1 General Code.

I note that in opinion No. 495 of the Attorney General’s Opinions for 1929, there is a holding to the contrary. I also note that in opinion No. 4076 of the Attorney General’s Opinions for 1932, township trustees are authorized to accept such securities for the deposit of township funds.

Under the reasoning of the latter opinion and in view of the fact that depository laws relating to township funds are similar to those relating to the deposit of municipal sinking funds, both providing only for the taking of a bond as security for deposits, I am unable to distinguish the two opinions and determine why sinking fund trustees are not authorized to take such securities from depositories, as well as township trustees.

In view of the above, will you kindly advise this Department whether you are of the same opinion as your predecessor, expressed in his opinion No. 495 of 1929, or whether it is your opinion that sinking fund trustees may accept mortgages to guarantee their funds on deposit.

You are aware, of course, that section 2288-1, General Code, authorizes the acceptance of mortgages to guarantee deposits of county, school

and general village funds, but makes no references to the sections covering the deposit of township funds, and sinking funds of a municipality."

Section 2288-1, General Code, referred to in your communication, in so far as material to your inquiry, reads:

"In addition to the undertakings or security provided for in sections 2732, 4295, 7605 and 7607, it shall be lawful to accept first mortgages, or bonds secured by first mortgages bearing interest not to exceed six per cent. per annum, upon unincumbered real estate located in Ohio, the value of which is at least double the amount loaned thereon. \* \*"

Such section authorizes the deposit of first mortgage securities in lieu of giving undertakings or depositing other types of securities, as security for deposits in certain types of depositories, that is, in lieu of the security or undertaking provided in Sections 2732, 4295, 7605 and 7607, General Code. Section 2732, General Code, authorizes the securing of deposits in county depositories. Section 4295, General Code, authorizes the securing of municipal depositories. Sections 7605 and 7607, General Code, authorize the securing of board of education depositories.

The language of such section is specific in its limitations, that is, in terms, it only purports to authorize the deposit of first mortgage securities as security for county, municipal or board of education depositories. One of my predecessors in office, in discussing Section 2288-1 with reference to township deposits, used the following language:

"I may point out that no reference is made to the security for the township funds which is covered by Section 3322 of the Code. Accordingly, there is no authority for the receipt of mortgages as security for township funds." (3 O. A. G., 1928 p. 1870.)

Another of my predecessors in office held in an opinion found in Opinions of the Attorney General for 1929, Vol. I, page 740, that:

"The trustees of a municipal sinking fund are not authorized to accept first mortgages or bonds secured by first mortgages, as security for deposits made in the public depository which may be selected by them."

In an opinion of one of my predecessors in office (1932 Opinions of the Attorney General, No. 4076), it was held that:

"\* \* township trustees may accept from depositories of township funds and depository banks may deposit in lieu of the bond required by Section 3324, General Code, the securities mentioned in Sections 4295 and 2288-1, General Code. \* \*".

In arriving at such conclusion that Attorney General reasoned that since the language,

"And whenever any of the funds of any of the political subdivisions of the state shall be deposited under any of the depository laws of the state, the securities herein mentioned, in addition to such other securities as are prescribed by law, may be accepted to secure such deposits."

authorized any political subdivisions to accept the securities therein mentioned, viz. governmental and municipal bonds "in addition to such other securities as are prescribed by law" it authorized township trustees to accept the securities therein mentioned as security for township depositories. In arriving at such conclusion, my predecessor followed an opinion of his predecessor in office, appearing in Volume I, Opinions of the Attorney General for 1928, page 108. My predecessor further extended his reasoning as follows: Since Section 4295, General Code, authorizes township trustees to accept certain securities the language of Section 2288-1, General Code, "In addition to the undertakings or securities provided for in sections \* \* 4295 \* \* it shall be lawful to accept first mortgages \* \*" township trustees are authorized to accept first mortgages as security for the return of funds deposited by them in a depository.

I am herein expressing no opinion as to whether the language of Section 4295, General Code, is or is not broad enough to authorize township trustees to accept as collateral security of the type mentioned therein for deposits in a township depository nor do I herein express any opinion whatever concerning security for township depositories. Such question is not raised by your inquiry.

The statutes authorizing the sinking fund trustees to establish depositories are somewhat similar to those for township depositories in that the only security authorized to be received for the return of such deposits is a surety bond. (See §4515 G. C.). The applicability of the provisions of Section 4295, General Code, to trustees of a sinking fund is even more remote than in the case of a township, for such body is clearly not a political subdivision either within the meaning of the tax levy law or the Uniform Bond Act (§§2293-1 and 5625-1 G. C.) nor could it be considered as a political subdivision for any other purpose. A political subdivision might be defined as:

"Certain territory and its inhabitants, organized for public advantage, and not in the interest of particular individuals or classes; the chief design of such a division is the exercise of governmental functions and to the electors residing therein is to some extent committed the power of local government, to be wielded mediately or immediately for the benefit of the people there residing."

See *State vs. Corker*, 67 N. J. L. 569, Ballentine's Law Dictionary.

The powers and duties and the manner and purpose of the sinking fund trustees, as gathered from the provisions of Sections 4506 to 4521, General Code, could scarcely be considered broad enough to bring them within the class of "a political subdivision". It, therefore, would appear that neither Section 4295 nor Section 2288-1, General Code, could have any application to depositories created by municipal sinking fund trustees.

However, even assuming that, if I am in error as to my conclusion that the funds of the municipal sinking fund trustees are not the funds of a subdivision, the language of Sections 4295 and 2288-1, General Code, is scarcely broad enough to authorize such trustees to accept the securities mentioned therein as security for the return of depository funds; for the statutes with reference to the security for sinking fund depositories are specific provisions and the pro-

visions of Sections 4295 and 2288-1, General Code, are general provisions of statutes. As held by the court in the first paragraph of the syllabus of *State ex rel. Elliott Co. vs. Conner*, 123 O. S., 310:

“Special statutory provisions for particular cases operate as exceptions to the general provisions which might otherwise include the particular cases and such cases are governed by special provisions.”

The special statutes provide that depositaries of sinking fund trustees may be secured only by a surety bond. However, in the absence of such rule of interpretation the language of Section 4295, General Code, is scarcely broad enough to authorize the acceptance of securities as security for the return of depositary deposits except in those cases where “other securities as are prescribed by law” may be accepted. In other words, Section 4295, General Code, only purports to authorize the acceptance of the securities mentioned therein as security for the return of depositary funds when the depositor is otherwise authorized to accept some securities for such purpose.

Specifically answering your inquiry, it is my opinion that Section 2288-1, General Code, does not authorize municipal sinking fund trustees to accept first mortgages as security for the return of funds deposited in a depositary created for their funds. (Opinions of the Attorney General for 1929, Vol. I, p. 740 approved and followed.)

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

1678.

COUNTY CHILDREN'S HOME — COUNTY COMMISSIONERS UN-AUTHORIZED TO PURCHASE LAND ADJACENT THERETO WHEN SAID HOME HELD UNDER INVALID LEASE.

*SYLLABUS:*

*County commissioners are unauthorized to purchase real estate by virtue of section 2433, General Code, where such land is adjacent to a county children's home which is held by the county commissioners under an invalid lease.*

COLUMBUS, OHIO, October 6, 1933.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

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

“I am herewith requesting an opinion under the following set of facts:

In 1917, A. B. sold to the A. B. Welfare Assn. a piece of real estate together with the buildings absolutely. In 1924, the A. B. Welfare Assn. leased this real estate to the County Commissioners of this County for a period of 10 years to be used as a Children's Home. The