

OPINION NO. 82-094**Syllabus:**

1. Pursuant to R.C. 135.181(B) a public depository may designate one or more trustees with whom securities in one pool may be deposited.
2. Pursuant to R.C. 135.181(L) upon request of a treasurer, no more often than four times a year, a trustee must report the total value, as determined by the depository, of the pool of securities deposited with him. A trustee must also provide an itemized list of the securities in the pool, which must include any information necessary to adequately describe each security.

To: Gertrude W. Donahey, Treasurer of State, Columbus, Ohio
By: William J. Brown, Attorney General, November 15, 1982

I have before me your request for my opinion concerning recent amendments to the Uniform Depository Act. Your specific questions are as follows:

(1) Section 135.181(B) provides that "a single pool of eligible securities" be created and [subsection (E) states] that "an institution designated as a public depository shall designate a qualified trustee and deposit with the trustee for safekeeping the eligible securities pledged pursuant to division [B] of this section." May a public depository utilize multiple trustees and still be considered as having a single pool of pledged securities to secure all public fund accounts, or must the public depository maintain one pool of securities per trustee to secure specific public fund accounts?

(2) Divisions (H) and (L) appear to be in conflict regarding the role of the trustee. Division (H) states: ". . . a trustee shall have no duty or obligation to determine the eligibility, market value, or face value of any securities deposited with the trustee by a public depository." However, under division (L), the trustee must report the total value of the pool of securities in addition to an itemized listing of the securities within the pool. In order for a trustee to determine the

pool value, the face value of each individual security must first be known. Likewise, the face value of the securities must be known in order for the trustee to provide an itemized listing of the securities within the pool (note: face value = par value, current principal, or exact principal). Does a trustee have the responsibility to provide a thorough securities-listing, including face value (or other investment terms as previously noted) and a pool value, in accordance with division (C), on a regular basis if requested by a treasurer?

Your questions are limited to situations in which the pooling method of collateralizing public funds is used. Provision for this method was added to the Uniform Depository Law by Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982).

Your first question asks whether a public depository may use, in accordance with R.C. 135.181(B), multiple trustees for a single pool of securities. Although R.C. 135.181(B) refers to a single trustee, as used in the Revised Code, "[t]he singular includes the plural, and the plural includes the singular." R.C. 1.43(A). Therefore, pursuant to R.C. 135.181(B) a public depository may designate one or more trustees with whom securities in its pool may be deposited.

Your second question asks whether there is a conflict in the duties of a trustee as set forth in R.C. 135.181(H) and (L). Subdivision (H) provides:

Notwithstanding the fact that a public depository is required to pledge eligible securities in certain amounts to secure deposits of public moneys, a trustee shall have no duty or obligation to determine the eligibility, market value, or face value of any securities deposited with the trustee by a public depository. This applies in all situations including, but not limited to, a substitution or exchange of securities, but excluding those situations effectuated by division (I) of this section in which the trustee is required to determine face and market value.

This section clearly states that a trustee with whom securities have been deposited need not determine the eligibility, market value, or face value of such securities, unless such determinations are required in a situation effectuated by R.C. 135.181(I), which applies only if a public depository fails to pay over any part of the public deposits secured pursuant to R.C. 135.181(B). R.C. 135.181(L), however, requires a trustee to report the value of the pool based on the valuations prescribed in division (C), which are face values or percentages thereof, and to provide an itemized list of the securities in the pool. As you recognize in your question, a conflict arises if a trustee has no duty to determine value but does have a duty to report it. Statutes which appear to conflict must be harmonized if possible, to yield a reasonable result. Lucas County Board of Commissioners v. Toledo, 28 Ohio St. 2d 214, 277 N.E.2d 193 (1971); State ex rel. Adsmund v. Board of Education, 135 Ohio St. 383, 21 N.E.2d 94 (1939).

In order to harmonize R.C. 135.181(H) and (L) I have looked to the other provisions of the statute. See First Fed. Savings & Loan Assn. of Warren v. Evatt, 143 Ohio St. 243, 54 N.E.2d 795 (1944) (a statute must be construed as a whole). R.C. 135.181(B) permits a depository to choose to use the pooling method of collateralization and requires that when it exercises such option the depository must make an initial valuation pursuant to subsection (C). Once securities have been pledged initially, R.C. 135.181(G) authorizes a public depository to exchange or release those securities. R.C. 135.181(G) states:

The public depository at any time may substitute, exchange, or release eligible securities deposited with a qualified trustee pursuant to this section, provided that such substitution, exchange, or release does not reduce the total value of the securities, based on the valuations prescribed in division (C) of this section, to an amount that is less than one hundred ten per cent of the total amount of public deposits as determined pursuant to division (B) of this section.

This section permits a depository to exchange or release securities as long as the change does not reduce the value of the remaining pool to an amount that is less than one hundred ten percent of the depository's public deposits. The duty to provide and maintain this percentage of collateralization is placed upon the depository. When the language of subsection (H) is read as it is placed, directly after subsection (G), it appears that the General Assembly intended merely to clarify the fact that the depository and not a trustee is responsible for insuring that the securities pledged are eligible and of adequate value to secure the public deposit. If such a construction of R.C., 135.181(H) is used, the conflict with subsection (L) is avoided. A trustee must report the value of the pool as determined by the depository, but is not responsible for insuring that such value remains above one hundred ten percent of the amount of public deposits which the pool collateralizes.

You have also asked what R.C. 135.181(L) means by "itemized list of securities." R.C. 135.181(L) does not specify what information must be included in such list. It would appear, however, that the purpose of this requirement is to disclose to the treasurer the specific securities in the pool. Accordingly, the itemized list must include any information necessary to identify the securities. The question of what information is necessary in order to sufficiently describe a security is, however, a question of fact, and the level of detail required may vary for different securities. I can conclude, as a matter of law, only that when requested by a treasurer, no more often than four times a year, a trustee must include in its itemized list of securities that information which is necessary to give an adequate description of each security.

In specific answer to your questions, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 135.181(B) a public depository may designate one or more trustees with whom securities in one pool may be deposited.
2. Pursuant to R.C. 135.181(L) upon request of a treasurer, no more often than four times a year, a trustee must report the total value, as determined by the depository, of the pool of securities deposited with him. A trustee must also provide an itemized list of the securities in the pool, which must include any information necessary to adequately describe each security.