838.

DEPOSITARIES—UNINCORPORATED BANKS MAY BID AND BE DESIGNATED AS DEPOSITARIES OF COUNTY FUNDS.

*SYLLABUS:*

*By virtue of the provisions of Sections 710-84 and 2715 of the General Code, unincorporated banks are eligible to bid therefor and be designated as depositaries of county funds.*

COLUMBUS, OHIO, August 6, 1927.

HON. DEANE M. RICHMOND, *Prosecuting Attorney, London, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of August 2, 1927, reading as follows:

> "In view of G. C. 2715 and 710-84 can an unincorporated bank become a depository for county funds by competitive bidding against incorporated banks? It will be noticed the original Section 2715 is a rather old statute and that in 108 Ohio Laws the Legislature passed G. C. 710-84 and then in 109 Ohio Laws they re-enacted the present Section 2715.
>
> At the present time, two private banks have public funds of the county and the contract is about to expire. Must the commissioners call in this money, if they have acceptable bids from incorporated banks?"

Section 710-84 of the General Code reads as follows:

> "Whenever any of the funds of the state, or any of the political subdivisions of the state, shall be deposited under any of the depositary laws of the state, every unincorporated bank shall be permitted to bid upon and be designated as depository of such funds, upon furnishing such surety or securities therefor as is prescribed by the law."

This section was enacted in its present form on April 11, 1919, as a part of "An act—Revising and codifying the laws relating to the organization of banks and the inspection thereof," (108 v. Pt. 1, 80, 99).

A prior analogous section was enacted on April 17, 1913, as Section 13, of "An act—To provide for the examination, regulation, supervision and dissolution of certain banking concerns" (103 v. 379, 384), the section reading as follows:

> "That whenever any of the funds of the state or any of the political subdivisions of the state, shall be deposited under any of the depository laws of the state, every corporation, person, partnership and association coming within the purview of this act shall be permitted to bid upon and be designated as depositories of such funds, upon furnishing such surety or securities therefor as is prescribed by the laws of the state of Ohio; provided, however, that there shall not be deposited with any such corporation, person, partnership, or association by any such political subdivision an amount in excess of $500,000, nor in any event an amount in excess of fifty (50) per cent of the amount of the funds of such political subdivision so at any time to be deposited."

This section was amended on May 27, 1915, (105 v. 505), the legislature striking out the words at the end of the section "nor in any event an amount in excess of fifty (50) per cent of the amount of the funds of such political subdivision so at any time to be deposited."

Excepting the words "seat" and "at" inserted in parenthesis, Section 2715, General Code, reads as follows:

> "The commissioners in each county shall designate in the manner hereinafter provided a bank or banks or trust companies, situated in the county and duly incorporated under the laws of this state, or organized under the laws of the United States, as inactive depositaries, and one or more of such banks or trust companies located in the county, (seat) *at least one of which shall be located at the county seat* as active depositaries of the money of the county. In a county where such bank or trust company does not exist or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositaries, the commissioners shall designate a private bank or banks, located in the county as such inactive depositaries, and if in such county no such private bank exists or fails to bid as provided herein, or to comply with the conditions of this chapter relating to county depositaries, then the commissioners shall designate any other bank or banks incorporated under the laws of this state, or organized under the laws of the United States, as such inactive depositaries. If there be no such bank or trust company incorporated under the laws of the state, or organized under the laws of the United States, located in (at) the county, (seat) then the commissioners shall designate a private bank, if there be one located therein, as such active depositary. No bank or trust company shall receive a larger deposit than one million dollars, *except that in case the county commissioners shall find that there will be an excess of money in the treasury of any county which it will be impossible to deposit under the limitation of one million dollars, such bank, banks or trust companies shall be permitted to receive an amount not to exceed five million dollars."* (Italics the writer's)

Section 2715, supra, was originally Section 1136-1 of the Revised Statutes. At the time of the enactment of Section 744-12, supra, it read as above set forth, except that the word "seat", above shown in parenthesis was in the section at the places indicated, the word "in" read "at", and the parts indicated by the italics were *not* contained in the section. The section was last amended *prior* to the passage of Section 744-12, supra, on March 30, 1911, (102 v. 59). It has been once amended subsequent to the passage of Section 744-12, supra, viz. on March 22, 1921, (109 v. 71), when the word "seat" was stricken from the statute and the words above italicized inserted.

After the passage of Section 744-12, supra, it was held by this department in three separate opinions that the effect of such section to render private banks eligible to bid therefor and "be designated as a depository of the funds of the state or of any political subdivision of the State." See Opinions, Attorney General, 1915, Vol. I, page 66; Vol. II, page 1279; and Vol. III, page 2065.

In the opinion reported in Vol. II, page 1279, it was said as follows:

> "Section 744-12, G. C., 103 O. L., 384, being Section 13 of the act above referred to, provides as follows:
>
> (Here follows Section 744-12 above quoted)

"The effect of the provisions of this section is to place banking concerns, coming within the purview of this act, on a par with banks and trust companies organized under the laws of the state or of the United States, insofar as their eligibility to bid for public funds of the state, or any political subdivision, is concerned. It follows, therefore, that those provisions of Section 2715, G. C., limiting county commissioners in designating depositaries of public funds to banks and trust companies, organized under the laws of the state or of the United States, are repealed by implication by the provision of Section 744-12, G. C.

I am of the opinion, therefore, in answer to your question, that a board of county commissioners in its advertisement for bids for the deposit of public funds, should invite proposals under both Section 2715, G. C., and Section 744-12, G. C.

* * * * * * * * * *

In answering your second question, I am of the opinion that, if the advertisement for bids for the public funds of the county is not so worded as to invite bids from the classes of banking concerns mentioned in both Section 2715, G. C., and Section 744-12, G. C., either by appropriate language or by express reference to said sections, said advertisement is not sufficient in law. An express reference to either of said sections, without referring to the other, would be misleading and would tend to defeat the plain provision of the law governing the deposit of public funds, viz.,to secure full publicity and the greatest possible competition in bidding."

I am informed that the holdings of these three opinions have been generally followed, and that since the passage of Section 744-12, supra, it has been the practice over the state to permit private banks to bid therefor and act as depositaries of public funds.

The question here to be determined is, what effect did the amendment of Section 2715, supra, on March 22, 1921, (109 v. 71) have on the law as it then existed permitting private banks to be depositaries of public funds.

It is axiomatic that the object of statutory construction is to ascertain and give effect to the intention of the legislature. It is also a fundamental rule that all statutes are presumed to be enacted by the legislature with knowledge of the existing condition of the law and with reference to it. See 36 Cyc. 1146.

While by the act passed on March 22, 1921, (109 v. 71), the orginal Section 2715 was repealed and the new section enacted in its entirety, what the legislature actually did was merely to amend the section as will hereinafter appear. It is provided by Section 16, Article II, of the Constitution of Ohio, that "No law shall be * * * amended unless the new act contains the entire act * * * or the section or sections amended."

The title of the act of March 22, 1921, is:

"An act—To amend Section 2715 of the General Code of Ohio so as to enlarge the limitation placed upon the deposit of county moneys."

The first sentence in Section I of the act reads, "That Section 2715 of the General Code of Ohio be *amended* so as to read as follows:"

As above stated it must be presumed that at the time of the passage of the act of March 22, 1921, the General Assembly had knowledge of the effect of Section 710-84, supra, and of the existing condition of the law. As plainly expressed in the title of said act the purpose of the amendments therein made was "to *enlarge*

the limitation placed upon the deposit of county moneys" and not to narrow the same. It seems clear that the intent of the legislature, as shown by the enactment of the section in its identical terms with the exception of the changes above pointed out and by the title of the act, was *not* to make any change as to the eligibility of banks which might be designated as depositaries for public funds but only (1) to change the requirement that active depositaries be located in the county seat to the provision that at least one of the active depositaries must be so located, thus permitting banks in the county outside the county seat to bid, and (2) further to permit, under the circumstances prescribed, one bank to receive an amount not to exceed five million dollars instead of an amount not exceeding one million dollars as theretofore provided.

As stated in 36 Cyc. 1164:

> "*Amendments are to be construed together with the original act to which they relate as constituting one law; and also together with other statutes on the same subject,* as part of a coherent system of legislation. The old law should be considered, the evils arising under it, and the remedy provided by the amendment, and that construction of the amended act should be adopted which will best repress the evils and advance the remedy. Words used in the original act will be presumed to be used in the same sense in the amendment. * * * The original provisions appearing in the amended act are to be regarded as having been the law since they were first enacted, and as still speaking from that time; while the new provisions are to be construed as enacted at the time the amendment took effect. It will be presumed that the legislature, in adopting the amendment, intended to make some change in the existing law, and therefore the courts will endeavor to give some effect to the amendment. A change of phraseology from that of the original act will raise the presumption that a change of meaning was also intended; * * * " (Italics the writers').

From what has been said, since by the passage of the act of March 22, 1921, (109 v. 71) it seems clear that the legislature only intended to amend the existing law in the two particulars above indicated, no change having been made of the provisions of Section 710-84, supra, it is my opinion that by virtue of the provisions of Sections 710-84 and 2715 of the General Code, unincorporated banks are eligible to bid therefor and be designated as depositaries of county funds.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

---

839.

CENSORSHIP—IT WOULD CONSTITUTE AN ABUSE OF DISCRETION TO PASS A MOTION PICTURE FILM WHICH HAS BEEN BOOTLEGGED INTO OHIO IN VIOLATION OF FEDERAL LAW.

*SYLLABUS:*

*It would constitute an abuse of discretion to pass a motion picture film which*