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APPROVAL—BONDS OF BAINBRIDGE TWP. RURAL SCHOOL DISTRICT, GEAUGA COUNTY, OHIO, \$2,000.00.

COLUMBUS, OHIO, June 24, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Bainbridge Twp. Rural School Dist., Geauga County, Ohio, \$2,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds dated July 1, 1937, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

785.

TREASURER MAY WITHDRAW MONEYS PLACED ON INACTIVE DEPOSIT, WHEN—THIRTY DAYS' NOTICE.

SYLLABUS:

Section 2296-14, General Code, confers upon the Treasurer of State and treasurer or other officer exercising the functions of treasurer of any subdivision discretionary power to enter into a written contract providing that a greater than thirty days' notice in advance of withdrawals may be given for the withdrawal of moneys of his subdivision placed on inactive deposit.

COLUMBUS, OHIO, June 24, 1937.

HON. HENRY J. KNAPKE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"I respectfully request your opinion on the following question:

As the regulations of the board of directors of the Federal Deposit Insurance Corporation and the board of directors of the Federal Reserve System regulate the rate of interest to be paid on inactive deposits to a 1% maximum on any deposit having a maturity date of less than ninety days:

It is possible for such a depository to make application for and pay a rate of interest on the inactive deposits of the public moneys of the state or of a subdivision in excess of 1%, in view of the requirements of GC 2296-14 of the Uniform Depository Act, when such subdivision has public moneys to deposit and which cannot legally be expended for a period of several years, i. e. a two-year levy for building purposes?"

Your question arises, I am informed, on account of the fact that the regulations of the Federal Reserve Board to which you refer authorize a rate of interest of 2% on inactive deposits having a maturity date of not less than six months and an interest rate of 2½% for a greater minimum period.

Section 2296-14, General Code, being one of the sections of the Uniform Depository Act, provides as follows:

"Active deposits shall be made in the form of commercial accounts, and subject to check. Inactive deposits shall be evidenced by negotiable certificates of deposit each of which shall provide on its face that the amount of such deposit is payable upon written notice to be given not less than thirty days before the date of repayment or, in the discretion of the treasurer, by written contracts, each of which shall provide that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the expiration of the period of notice which must be given by the treasurer in writing not less than thirty days in advance of withdrawals."

A careful reading of the second sentence of the foregoing section discloses that there are contained therein two alternative provisions: There appears first the general provision that inactive deposits shall be evidenced by negotiable certificates of deposit which shall provide that the amount is payable upon written notice to be given not less than thirty days before the date of repayment; this general provision is followed by a grant of discretionary power to the treasurer, whereby he may enter into a written contract which shall provide that no part of the deposit may

be withdrawn "prior to the expiration of the period of notice which must be given by the treasurer in writing not less than thirty days in advance of withdrawals." This alternative provision contained in the last half of the second sentence of Section 2296-14, *supra*, is subject to two constructions. It might be construed as vesting in the treasurer the authority to enter into a written contract providing that the deposit may be withdrawn upon the giving of at least a thirty days' notice but that a longer notice is unauthorized. The other construction which may be given to the latter portion of this section is that the treasurer may enter into a written contract providing for other than a thirty day notice of withdrawal but so long as such notice is given not less than thirty days in advance of withdrawals. If the first possible construction were to be adopted, it is apparent that no purpose would be ascribed to the legislature in enacting that part of the section beginning with the word "or." To say that the treasurer may enter into a written contract which shall provide the same period of notice of withdrawal as shall apply where no written contract is entered into would be to say that the legislature has done a vain thing in the enactment of this portion of the section. This the courts will not do. The text in 37 O. Jur. pp. 614 to 616, in support of which numerous authorities are cited, is as follows:

"To interpret a law as to make it wholly nugatory is the last extremity to which judicial construction should go. When the act or section under consideration is equally susceptible of two constructions, one of which will maintain and the other destroy it, the courts should adopt the former. Accordingly, an interpretation should, if possible, be avoided, under which the statute or section or any part thereof is nullified, or, as otherwise expressed, defeated, abrogated, rendered useless, idle, needless, unnecessary, vain, nugatory, inoperative, void, meaningless, or, in general, without effect or significance."

In view of the foregoing and in specific answer to your question, it is my opinion that Section 2296-14, General Code, confers upon the Treasurer of State and treasurer or other officer exercising the functions of treasurer of any subdivision discretionary power to enter into a written contract providing that a greater than thirty days' notice in advance of withdrawals may be given for the withdrawal of moneys of his subdivision placed on inactive deposit.

Respectfully,

HERBERT S. DUFFY,
Attorney General.