

1893.

APPROVAL, BONDS OF CITY OF DAYTON, MONTGOMERY COUNTY,  
OHIO, \$43,000.00.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

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

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1894.

APPROVAL, BONDS OF CLEARVIEW RURAL SCHOOL DISTRICT, LO-  
RAIN COUNTY, OHIO, \$17,600.00.

COLUMBUS, OHIO, NOVEMBER 20, 1933.

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

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1895.

DEPOSITORY—WHERE COMPETITIVE BIDDING REQUIRED, COUNTY COMMISSIONERS, TOWNSHIP TRUSTEES AND BOARDS OF EDUCATION MAY ENTER INTO DEPOSITORY CONTRACT WITH BANK, PART OF WHOSE STOCKHOLDERS OR DIRECTORS ARE MEMBERS OF BOARDS OF POLITICAL SUBDIVISIONS—BOARD OF EDUCATION EXCEPTION WHEN.

*SYLLABUS:*

1. *Boards of county commissioners, boards of township trustees and boards of education, authorized by statute to create depositories only by competitive bidding, may legally enter into a depository contract with a bank having as stockholders and directors one or more members of the board of the contracting political subdivision.*

2. *The board of education of a school district containing less than two banks is prohibited by Section 4757, General Code, from entering into a depository contract with a bank of which one or more members of the board are stockholders and directors, since Section 7607, General Code, authorizing the creation of such depository, does not provide for competitive bidding.*

COLUMBUS, OHIO, November 21, 1933.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I have your request for my opinion as to the authority of a board of county commissioners, board of township trustees and board of education to enter into a contract for the deposit of the public funds of the respective political sub-

divisions with a bank having upon its board of directors one or more members of the contracting board of the subdivision.

The applicable depository statutes contain no inhibition against such contract. Sections 12910 to 12914 inclusive of the General Code relate to the interest of public officers in public contracts. Sections 12913 and 12914 have no application to any of the public officers in question. Sections 12910 and 12911 concern the interest of officers and public employes in contracts "for the purchase of property, supplies or fire insurance \* \* \*," Clearly those sections do not apply to depository contracts. *Richardson vs. Township Trustees*, 6 N. P. (N. S.) 505.

Section 12912 reads:

"Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

This section is restricted in its application to township and municipal officers. See *Doll, vs. State*, 45 O. S. 445. Section 12912 is the codification of Section 6976 R. S. In *Richardson vs. Township Trustees, supra*, it was held, as disclosed by the syllabus:

"The fact that one of the township trustees is a stockholder and director in a bank situated within the township, which has submitted the highest bid for the usage of the township funds and to act as depository under the provisions of Section 1513, does not under the provisions of Section 6976 disqualify the bank from so acting, and injunction will not lie to prevent the award."

The court said at p. 508:

"The township trustees under the depository act do not enter into a contract with any bank. They simply put the machinery in motion to get the highest bid, and after the bidder enters into a proper bond then the treasurer is the one who deals with the bank so selected as a depository."

This office, in an opinion reported in Annual Report of the Attorney General, 1907-1908, p. 122, held that a bank whose cashier was a member of council might become a city depository. In another opinion reported in Opinions of the Attorney General, 1927, Val. 4, p. 2585, it was held as shown by the syllabus:

"A village council may select and use a local bank as a depository even though one or more members of the village council are also members of the board of directors of such bank."

Another of my predecessors in an opinion found in the Annual Report of the Attorney General, 1911-1912, Vol. 2, p. 1173, held, as appears from the syllabus:

"There is no prohibition in the statutes against the award of county funds to a bank of which one of the commissioners is president, where such bank is the successful bidder and all statutory requirements have been complied with."

In this instance county funds were awarded to a bank by the board of county commissioners, a member of which was a stockholder and the president of the bank. The then Attorney General held that since there was no inhibition in the depository statute, and since the purpose of that act was to procure for the county the highest rate of interest by the fullest competitive bidding, the bank could legally become a county depository. As above noted, Section 12912, General Code, has no application to county commissioners, but even if its scope had been so extended, the same conclusion would have been reached in this opinion, as appears from the opinions relating to depository contracts of municipalities above discussed.

Section 4757, General Code, relating to boards of education, reads in part:

"No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member, except as clerk or treasurer."

Sections 7605 and 7606 provide that in school districts containing two or more banks, depositories of school funds shall be created by competitive bidding.

Section 7607 provides for the creation of depositories in districts having less than two banks. This section, as amended by H. B. 675, 90th G. A. provides, *inter alia*:

"In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, for the full time the funds or any part thereof are on deposit."

The change in this section effected by the recent amendment does not alter its effect upon contracts of the kind here under consideration.

In an opinion of this office, reported in Annual Report of the Attorney General, 1912, Vol 1, p. 254, it was held, as disclosed by the syllabus:

"The deposit of a board of education of a village district wherewith there is no bank, is governed by Section 7607, General Code, which provides for a contract by the board with a conveniently located bank offering the highest interest. Such a contract is within Section 4757, General Code, and when made by the board, with a bank whereof a member of the board is both a stockholder and a director, it is therefore, void."

In this opinion a distinction was made between the functions of a board under Sections 7605 and 7606 where bids are received, and those of a board acting under Section 7607. The following language appears at p. 255:

“It will be observed that the section authorizes the board of education to enter into a contract with any conveniently situated bank which qualifies otherwise. The procedure is quite different from that outlined in the preceding section, which I shall not quote. That section, which applies to the case in which the district contains two or more banks, requires that competitive bids be solicited in the manner therein described, and the board of education has nothing whatever to do, excepting to determine the sufficiency of the security offered by the successful bidder.

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My predecessor, Hon. Wade H. Ellis, rendered an opinion to the prosecuting attorney of Holmes County, in which he held that the section last above quoted would not render invalid a depository award made under what is now Section 7605 and Section 7606 of the General Code. In the course of that opinion he stated, speaking of what is now Section 4757, General Code, that:

“If this section is applicable at all, it would render voidable all contracts between a bank and a school board on which there was a single member who was also a stockholder in a bank, regardless of whether his vote was necessary to pass a resolution. (*Bellaire Goblet Company vs. Findlay*, 5, O. C. C. 418)’

The former attorney general's reasoning was that inasmuch as a board of education of a school district having two or more banks has nothing whatever to do of a discretionary nature after it has passed the resolution now required by law, for the establishment of a depository, but is required by law to award the deposit of its funds to such bank or banks which offer the highest rate of interest and sufficient security, the case was not within the obvious intendment of the prohibitory section.”

The opinion of Hon. Wade H. Ellis, referred to in the quotation, is reported in the Annual Report of the Attorney General, 1906, p. 287. The distinction drawn in the 1912 opinion appears to me to be sound. Under a statute requiring that the contract be awarded by competitive bidding to the bank offering the highest rate of interest, the public officers exercise no discretion which they might abuse to the detriment of the public and for their own personal gain. In my judgment the legislature did not intend to bring such contracts within the scope of either Section 12912 or Section 4757.

In the light of the foregoing and in specific answer to your inquiry it is my opinion that:

1. Boards of county commissioners, boards of township trustees and boards of education, authorized by statute to create depositories only by competitive bidding, may legally enter into a depository contract with a bank having as stockholders and

directors one or more members of the board of the contracting political subdivision.

2. The board of education of a school district containing less than two banks is prohibited by Section 4757, General Code, from entering into a depository contract with a bank of which one or more members of the board are stockholders and directors, since Section 7607, General Code, authorizing the creation of such depository, does not provide for competitive bidding.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

1896.

SCHOOL DISTRICT, TUITION RATE PAYABLE FROM ONE SCHOOL DISTRICT TO ANOTHER WHERE PUPILS OF FORMER ATTEND SCHOOL IN LATTER DISTRICT—TUITION RATE MAY NOT EXCEED THAT FIXED BY SECTION 7736 AND 7747, G. C.

*SYLLABUS:*

1. *When two school districts contract with each other for the admission of pupils residing in one district to the schools of the other, and said contract fixes the rate of tuition for said pupils to be paid by the district of the pupils' residence to the district where they attend school, consideration should be given in the fixing of that rate to the limitations on the amount of tuition which may be charged as fixed by Sections 7736 and 7747, General Code.*

2. *Where such a contract provides for the payment of tuition in excess of the limitations fixed therefor by Sections 7736 and 7747, General Code, the contract is unauthorized and void, and if the children attend school in pursuance of the contract, the amount of tuition that should be paid is that fixed by Sections 7736 and 7747, General Code.*

COLUMBUS, OHIO, November 21, 1933.

HON. LEO M. WINGET, *Prosecuting Attorney, Sidney, Ohio.*

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

“The Board of Education of ‘A’ School District entered into a contract with the Board of Education of ‘B’ School District to pay the tuition for ten pupils residing in ‘A’ School District to attend school in ‘B’ School District, thereby increasing the aggregate days of attendance of ‘B’ School District some 1500 days in the school year.

Under Section 7600 of the General Code of Ohio, ‘B’ School District receives the money out of the ‘County Educational Equalization Fund’ which in part was derived through the increased aggregate days of attendance from ‘A’ School District.

Should ‘B’ School District reimburse ‘A’ School District for the money received out of the ‘County Educational Equalization Fund’ which was received upon the increase in the aggregate days of attendance of the pupils