The grants of easement here in question, designated with respect to the number of the instrument and the name of the grantor, are as follows:

Number	Name
496	Audria and Hazel Elsea
497	James B. Bright.
498	Levi Harvitt
499	Dave Bishop
500	Frank Swab
501	Minerva Rose

By the above grants there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the respective grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

214.

CITY TREASURER—THEFT OF MONEY—NO CLAIM UNDER BURGLARY AND ROBBERY POLICY—RESPONSIBILITY OF CITY TREASURER AND CASHIER—SURETY.

SYLLABUS:

1. *An insurance company is not liable to a city by the terms of its contract for a loss of money when the loss does not occur by burglary or robbery as defined in the contract.*

2. *A city treasurer and his surety and a cashier and his surety are severally liable to a city for the loss of money coming into their hands as such officials, unless such loss is due to an act of God or a public enemy.*

COLUMBUS, OHIO, March 6, 1937.

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

GENTLEMEN: This will acknowledge receipt of your letter of recent date which reads as follows:

> "We are inclosing herewith a letter from our Cleveland Examiner indicating that the Treasury of that City was robbed of certain payroll moneys on May 21, 1936. Also inclosed are certain abstracts from the burglary and robbery Insurance Company's policy carried by the City on treasury funds, and from the surety bond given by such Treasury cashiers and officials. May we request that you examine these inclosures and give us your opinion in answer to the following questions:
>
> First. Does the City have any claim on the Insurance Company for the loss which occurred?
>
> Second. If no recovery can be obtained from the Insurance Company under the policy, should a finding be rendered against the City Treasurer (as custodian of the public funds) and the bonding company, the cashier (as paymaster) and the bonding company, or both treasurer and cashier, jointly and severally, and the bonding company?"

Your Cleveland Examiner advises that at approximately 12:20 p. m. on May 21, 1936, a cashier assigned to the paymaster's cage in the City Treasury at Cleveland reported that while absent from his paymaster's cage in answer to a telephone call, certain payroll envelopes containing $1949.00 had been taken. Statements given to police and insurance investigators indicate that the theft was probably accomplished by the insertion of a hook, cane, wire or some such implement through the grille window of the cage to draw the tray containing such envelopes to a position where a person on the outside of the cage window was able to reach in and grasp a number of the envelopes without being observed in the act. Your first question is whether or not the city has a claim on the insurance company for the loss which occurred in the above manner.

Under the provisions of the insurance policy the company agrees to pay the city for a loss of money and securities by burglary or robbery. The terms of the contract are plain and unambiguous. The company clearly limits its liability in the event of loss by burglary to "Money and Securities feloniously abstracted from within that part of any *safe* or *vault* * * * by any person who shall have made forcible entry therein by the use of tools, explosives, electricity, gas or other

chemicals, while such safe or vault is duly closed and located in the Assured's premises." There is no question from the facts submitted by your examiner that the money stolen was not located in a safe or in a vault so that regardless of the method used by the unknown person in obtaining possession of the money, the company would not be liable for the loss under the terms of the contract, as the loss was not one by burglary.

Under the terms of the contract defining robbery, there must be "a felonious or forcible taking of property (a) by violence inflicted upon the person having care or custody of, or rightful access to, the property; or (b) by putting such person in fear of violence; or (c) by an overt felonious act committed in the presence of such person and of which such person was actually cognizant, provided such act is not committed by an officer or employee of the Assured."

It appears from the report of your examiner that no violence was inflicted upon the cashier in charge of the cage wherein the money was located nor was the cashier put in fear of violence. In fact, the cashier was absent from his cage for the purpose of answering a telephone call and, consequently, was not cognizant of the felonious act. It would seem, therefore, that none of the elements essential to robbery as defined in the contract was present and for that reason it is my opinion that the company would not be liable for the loss by robbery under the terms of the insurance policy.

The rules of construction applicable to insurance policies are similar to those which control ordinary contracts. In the case of *The Travelers' Insurance Company* vs. *Myers,* 62 O. S., 529, it was held:

> "Policies of insurance should be construed like other contracts, so as to give effect to the intention and express language of the parties."

In the case of *National Life and Accident Insurance Company,* vs. *Ray,* 117 O. S., 13, at page 22, the court said:

> "Insurance policies, like other written contracts, mean what they say and all they say. They are written for the protection of both parties thereto, and all others interested in the policies. If such contracts are not to be enforced as written, they might as well not be written at all."

Coming to the second question in your inquiry, it appears that the city purchased a surety bond covering practically all city employes and officers and included in the list the employes in the division of treasury,

specifically the city treasurer and the cashier asigned to the paymaster's cage in the city treasury, who was in active charge of the paymaster's cage at the time the money was stolen.

The bond in question was for the faithful, honest and impartial performance of their respective duties and was conditioned for the payment according to law of all moneys that shall come into their possession. By reason of these conditions of the bond, it would seem to follow that the treasurer and the cashier, together with the surety, would be liable for the loss of the moneys coming into their hands by virtue of their legal duties, even though lost through burglary, robbery or theft. It is immaterial, in my opinion, that the loss occurred through no negligence of either the treasurer or the cashier. In the case of *Seward* vs. *Surety Company,* 120 O. S., 47, the question presented was whether or not a postmaster is liable for the loss of certain moneys which he declined to pay to the Post Office Department for the reason that the money had been stolen. The court at page 49 said:

> "It has been the general policy, not only with government employees and appointees, but with state officers, county officers, township officers, and all other public officials, to hold the public official accountable for the moneys that come into his hands as such official, and his obligation has been held to be as broad as is the obligation of a common carrier of freight received for shipment; that is to say, that when he comes to account for the money received, it must be accounted for and paid over, unless payment by the official is prevented by an act of God or a public enemy; and burglary and larceny and the destruction by fire, or any other such reason, have not been accepted by the courts as a defense against a claim for the lost money. The decisions to this effect are so uniform and so numerous that no useful purpose would be served by restating the law that has been so many times stated so clearly. * * * In the main, it is said by practically all the cases that it would be distinctly against public policy not to require a public officer to account for and disburse according to law moneys that have come into his hands by virtue of his being such public officer; that it would open the door very wide for the accomplishment of the grossest frauds if public officers were permitted to present as the defense, when called upon to disburse the money according to law, that it had been purloined or destroyed by some deputy, or other subordinate, connected with the public office."

It would seem that the treasurer and the cashier would be severally liable for the loss of the money and a finding should be rendered against each of them severally. It is evident that the aggregate amount of your findings will be in excess of the amount of the city's loss. Although a separate action may be maintained against each of the parties upon his several liability, yet when the city has realized on such several judgments an amount equal to its loss, all remaining judgment liens should be released, for the city would have no right by reason of its several judgments to recover more than its actual loss. See *Clinton Bank* vs. *Hart,* 5 O. S., 36.

Specifically answering your inquiries, it is my opinion that:

1. The city has no claim on the insurance company for the loss which occurred, as the loss was not one by burglary or robbery within the meaning of the insurance policy.

2. A finding should be rendered against the city treasurer as custodian of the public funds and his surety and against the cashier as paymaster and his surety severally for the full amount of the loss. However, the city has no right to receive a greater amount than will replace its loss.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

215.

APPROVAL—BONDS OF MINERVA VILLAGE SCHOOL DISTRICT, STARK COUNTY, OHIO, $104,500.00 (Unlimited).

COLUMBUS, OHIO, March 8, 1937.

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

RE: Bonds of Minerva Village School Dist., Stark County, Ohio, $104,500.00 (Unlimited).

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 January 2, 1937, bearing interest at the rate of 3¼% per annum.