2209.

DEPOSITORY BANK—MAY SECURE DEPOSITS OF BOARD OF EDUCATION BY GIVING BOND OR DEPOSITING SECURITIES SPECIFIED IN SECTION 7605 TO 7607, GENERAL CODE—AMBIGUITY CONSTRUED.

SYLLABUS:

1. *When a board of education designates a bank or banks as its depository or depositories for the funds of the district, those funds when deposited in the depository bank or banks may lawfully be secured, either by the banks giving a good and sufficient bond or by depositing with the board of education the proper amount of securities of any of the classes enumerated in Sections* 7605 *and* 7607, *General Code, as amended by the* 90th *General Assembly.*

2. *Where the legislature in amending a statute observes the constitutional injunction to set out the entire section amended and repeal the existing section so amended, as contained in Section* 16, *Article II of the Constitution of Ohio, a legislative intent is not thereby expressed to enact the whole section as amended but an intention only to enact the change which is indicated.*

3. *Where a statute is amended, and the amended statute contains the entire statute as so amended, and the former statute is repealed, any parts of the former statute repeated in the amended statute which do not require a different construction in relation to the entire context of the statute as amended, should be construed as they had been, or would have been construed prior to the amendment, unless such construction would be inconsistent with the manifest intent of the legislature.*

COLUMBUS, OHIO, January 23, 1934.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR MR. SKINNER:—I am in receipt of your communication concerning the security which is to be furnished by school district depository banks. The question arises by reason of the ambiguous terms of Sections 7605 and 7607, of the General Code, as amended by the 90th General Assembly (115 O. L. 418), wherein provision is made for the security of the funds deposited by a board of education in its depository bank. The pertinent provisions of each of these statutes, as amended, which, to say the least, are somewhat ambiguous, are as follows:

> "Sec. 7605. * * Such bank or banks shall give a good and sufficient bond, or other interest bearing obligation of the United States, etc."
>
> Sec. 7607. * * Such bank or banks shall give good and sufficient bonds or other interest bearing obligations of the United States, etc."

It will be observed upon reference to these statutes as they existed prior to this recent amendment, that their terms, in so far as the question here presented is concerned, were precisely the same. This ambiguity first appeared in these statutes upon their amendment in 1927 (112 O. L. 195), as a result of the mistake of the printer in printing the acts. The then Attorney General, in an opinion which appears in the published Opinions of the Attorney General for 1927, at page 2164, after noting the history of the bill which culminated in the act of the legislature containing these statutes, and other pertinent conditions, held that the

proper interpretation of the language quoted is to permit such depository banks to secure the funds of a board of education either by the giving of a bond or by the deposit of the classes of securities enumerated in the statutes.

A question now arises as to the proper interpretation of this same language as used in the statutes as amended by the 90th General Assembly, inasmuch as the ambiguity might have been corrected, and the same rule can not be applied in construing the present statutes that was applied by the Attorney General in construing the former ones.

By comparing the present statutes with the former ones it seems apparent that the purpose of amending the statutes in 1933, was to eliminate the provision with reference to the minimum rate of interest that must be paid by a depository bank and to insert provisions extending the class of securities that may be hypothecated as security for the deposits so as to include bonds and notes of political subdivisions of states other than Ohio. The person who drew the amended sections simply copied all the parts of the former statutes which he did not wish to change, and most likely gave no thought whatever to the possibility of anyone raising any question as to the meaning of those parts of the statutes which were not changed and which had been applied by administrative officers and banks as meaning that school deposits in depository banks might lawfully be secured either by the giving of a bond or by the deposit of the classes of securities named in the statute.

Were it not for the provisions of Section 16 of Article II of the Constitution of Ohio, the purpose sought to be accomplished in the amendment of these statutes might have been accomplished without repeating the parts of the statutes which it was not intended to change. Said Section 16, Article II of the Constitution of Ohio, provides that:

> "* * no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed."

In jurisdictions where this, or a similar constitutional provision is not in force, it is the rule, as stated in Black on the Interpretation of Laws, 2d Ed., Sec. 169, that:

> "Unless the constitution otherwise specifically directs, it is sufficient if an amendatory act refers to the act to be amended in such a manner as to identify it substantially."

In the same work, Section 168, it is stated:

> "Where an amendment is made declaring that the original statute 'shall be amended so as to read as follows' retaining part of the original statute and incorporating therein new provisions, the effect is not to repeal, and then re-enact, the part retained but such part remains in force as from the time of the original enactment, while the new provisions become operative at the time the amendatory act goes into effect and all such portions of the original statute as are omitted from the amendatory act are abrogated thereby and are thereafter no part of the statute."

In the amendment of Sections 7605 and 7607, General Code, by the 90th General Assembly, the provision of the Constitution of Ohio quoted above, was observed and the entire sections as amended were set out and the statutes as they had existed prior thereto, were expressly repealed. (See Act of the Legislature—115 O. L. 417.)

Under such circumstances the rule stated in Black on the Interpretation of Laws, in Section 168, and by Sutherland in Lewis' Sutherland Statutory Construction, 2d Ed. pages 237 and 238, should be followed in the interpretation and application of the law. Said Sections 237 and 238, of Sutherland, read in part, as follows:

> "Sec. 237. The constitutional provision requiring amendments to be made by setting out the whole section as amended was not intended to make any different rule as to the effect of such amendments. So far as the section is changed it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal re-enactment should have the effect of disturbing the whole body of statutes in pari materia which had been passed since the first enactment. * *
>
> The portions of the amended section which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; * *"
>
> "Sec. 238. Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time. The intention manifested is the same as in an amendment enacted in the form noticed in the preceding section."

The rule noted above has been consistently followed by the courts of this and other states where a constitutional provision such as the one in Section 16 of Article II of the Constitution of Ohio is in force. It is well stated in the case of *McLaughlin* vs. *Newark,* 57 N. J. L., 298, as follows:

> "By observing the constitutional form of amending a section of a statute the legislature does not express an intention then to enact the whole section as amended, but only an intention then to enact the change which is indicated. Any other rule of construction would usually introduce unexpected results and work great inconvenience."

This rule was first applied in Ohio in the case of *McKibben* vs. *Lester,* 9 O. S. 627, where it is stated:

> "Where one or more sections of a statute are amended by a new act, and the amendatory act contains the entire section or sections amended, and repeals the section or sections so amended, the section or sections so amended must be construed as though introduced into the place of the repealed section or sections in the original act, and, therefore, in view of the provisions of the original act, as it stands after the amendatory sections are so introduced."

See also *State* vs. *Cincinnati,* 52 O. S. 419, 445; *State ex rel.* vs. *Bause,* 84 O. S. 207, 217; *State ex rel. Durr, Aud.,* vs. *Spiegel,* 91 O. S. 13; *State ex rel.* vs. *Fulton,* 99 O. S. 168, 177.

Another familiar rule of statutory construction that may be applied in the instant case, in my opinion, is stated in Corpus Juris, Vol. 59, page 959, as follows:

> "Where a statute that has been construed by the courts has been re-enacted in the same or substantially the same terms, the legislature is presumed to have been familiar with its construction and to have adopted it as a part of the law, unless it expressly provides for a different construction."

This rule has been repeatedly referred to and applied by the courts of Ohio. Among the cases in which the rule has been applied may be mentioned the case of *Spitzer* vs. *Stallings,* 109 O. S. 297; *Henry* vs. *Barberton,* 12 O. N. P. (N. S.) 364.

While it will not be contended that an opinion of the Attorney General has the force of a court decision, the fact can not be overlooked that the legislature, in the enactment of Sections 7605 and 7607, General Code, in 1933, had actual knowledge of the manner in which these sections had formerly been construed and applied by the Attorney General and by school administrative officers and banks. The necessity was not felt, and perhaps not thought of, for any change in the language of the statute other than to accomplish the purposes which the actual change indicated.

I am therefore of the opinion, in view of the familiar and universally accepted rules of statutory construction referred to above, that the proper construction of these statutes as they now exist, is that depository banks may secure the deposits of boards of education either by the giving of a bond or by the hypothecation of the securities enumerated by the statutes.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2210.

BOND OF CHIEF ACCOUNTANT OF HIGHWAY DEPARTMENT MUST BE CONDITIONED UPON FAITHFUL DISCHARGE OF DUTIES OF POSITION—FORM OF BOND SUBMITTED DISCUSSED AND DISAPPROVED.

SYLLABUS:

1. *A statutory bond given to the State of Ohio on which the chief accountant of the department of highways is principal, must be conditioned upon the faithful discharge of the duties of his position.*

2. *Form of bond submitted by a surety upon which the chief accountant of the department of highways is principal, discussed and disapproved.*

COLUMBUS, OHIO, January 24, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a bond, upon which Edward