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THE AWARD OF ACTIVE DEPOSITS OF THE BOARD OF EDUCATION BY THE GOVERNING BOARD—WHERE A SUBDIVISION HAS MORE THAN ONE ELIGIBLE INSTITUTION WITHIN ITS TERRITORIAL LIMITS—§§135.10, 135.01 (K) R.C. OAG NO. 1059—1937 PAGE 1859.

SYLLABUS:

1. Under the provisions of Section 135.10, Revised Code, where a subdivision has more than one eligible institution within its territorial limits that have made application for the active funds, the governing board of such subdivision shall award such active deposits to such institutions in proportion to their capital funds. (Opinion No. 1059, Opinions of the Attorney General for 1937, page 1859, approved and followed.)

2. Under the provisions of Section 135.01 (K), Revised Code, the governing board of a subdivision, in determining the portion of the active deposits to be placed in an eligible institution within its territorial limits, must apportion such active deposits based on the capital funds of all the offices of such institution which are located in the same county in which such subdivision is located.

Columbus, Ohio, May 26, 1960

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

Section 135.10 of the Revised Code, relative to the award of active deposits of the board of education, provides in part as follows:

“ \* \* \*. Such board shall award the active deposits of public moneys subject to its control to the eligible institution in proportion to its capital funds. \* \* \* ”

“In those instances where a banking institution is located outside a district but has a branch bank located within a district which is calling for applications for the deposits of board of education funds, and where such branch bank of a parent organization competes with an independent or local bank whose only office is located within the district, has created a question as to the basis of award of such active funds.

“The question arises as to whether the capital assets of a branch bank together with the capital assets of other banks of the parent organization must be given consideration by the board of education in making the award of active deposits as against the total assets of the local or independent bank.

“A specific example is cited as follows: The Elgin Local School District of Marion County will come into being as of July 1, 1960. Located within the territorial limits of the district are the offices of two banks; the Campbell National Bank of LaRue and the Greencamp Branch of the National City Bank of Marion. The Campbell National Bank of LaRue is an independent bank with only one office which is in the Village of LaRue. The Greencamp Branch of the National City Bank of Marion is one of seven offices of the National City Bank of Marion. The main office and all of the branch offices of the National City Bank are located in Marion County, the same county in which the Elgin Local School District is to be located.

“Both the Village of LaRue and the Village of Greencamp are located within the Elgin Local School District. Both the Campbell National Bank of LaRue and the Greencamp Branch of the National City Bank of Marion have indicated their intention to apply to the board of education of the Elgin Local School District to be designated the depository of active funds of the school district, on the basis that such board shall award the active deposit of public moneys subject to its control to the eligible institution in proportion to its capital funds.

“The foregoing creates a condition as to the basis of an award of the active deposits of said school district and the following inquiries are set forth.

“1. When there is located within a school district the offices of two banks, one of which is a branch bank and each of which is eligible to become a depository of active deposits of the school district, is it mandatory that the board of education of such school district allocate the active deposits between the two banks in proportion to the capital funds of the respective banks?

“2. If the answer to question No. 1 is in the affirmative, is the board of education of such school district, in determining the portion of the active deposits to be placed in the branch bank whose home office is located outside of the district, to be based upon such apportionment in relation to the capital funds allocated to the branch bank only or must the apportionment be based on the capital funds of the entire banking system consisting of the main bank and six branch offices?

“In giving consideration to the foregoing your attention is drawn to an analogous situation in which a bank has offices in more than one county and applies to be a depository of county funds. Section 135.01, Revised Code, contemplates this situation as follows:

“ ‘In the case of an institution having offices in more than one county, the capital funds of such institution, for the purpose of Sections 135.01 to 135.23, inclusive, of the Revised Code, relative to the deposit of the public moneys of each county and the subdivisions in such county, shall be considered to be that proportion of the capital funds of the institution which is represented by the ratio which the deposit liabilities of such institution originating at the office located in such county bears to the total deposit liabilities of the institution.’

“The similarity of the facts set forth above would appear to be analogous with the provisions of Section 135.01, Revised Code, and it would likewise seem to appear that it would be the intention of the Legislature to give consideration to such an allocation of capital funds in relation to the making of an award

of active moneys to be deposited by the board of education of a local school district.

“A formal opinion will be appreciated at your earliest convenience.”

In regard to your first question, your attention is directed to Opinion No. 1059, Opinions of the Attorney General for 1937, page 1859, in which the fourth paragraph of the syllabus reads as follows:

“4. In case the subdivision or county seat has more than one eligible institution within its territorial limits that have made application for the active funds, the governing board shall award such active deposits to such institutions in proportion to their capital funds.”

The then Attorney General based his opinion on the language of Section 2296-10, General Code, which read in part as follows:

“\* \* \* Such governing board shall award the active deposits of public moneys subject to its control to the institution or institutions eligible to receive the same in proportion to their capital funds \* \* \*.”

My predecessor recognized the possible inconvenience in placing the active deposits in more than one institution, but he stated at page 1866 of Opinion No. 1059, *supra*: “This problem is one for the legislative branch of government, and until it remedies the situation, Section 10 of the Act will have to be followed.” Section 2296-10, General Code, became Section 135.10, Revised Code, as a result of the 1953 Code revision (Amended House Bill No. 1, 100th General Assembly). Section 135.10, *supra*, now provides in part as follows:

“\* \* \* Such board shall award the active deposits of public moneys subject to its control to the eligible institution in proportion to its capital funds.\* \* \*”

I note that such section now refers to “the eligible institution” instead of “the institution or institutions eligible to receive the same.” This change in wording, however, was the result of a general code revision rather than a specific amendment of the section. It has been held that when the entire legislation affecting a particular subject matter has undergone revision and consolidation by codification, the revised section will be presumed to bear the same meaning as the original sections, unless it is clearly manifested that the legislature intended a change. *Loftin v. Loew's*

*Inc.*, 75 Ohio App., 448. That the legislature did not intend a substantive change by substituting "the eligible institution" for "the institution or institutions" is evidenced by the rule of construction provided for in Section 1.10 (C), Revised Code, as follows :

"As used in the Revised Code, unless the context otherwise requires :

"\* \* \*

"(C) Words in the plural number include the singular number, and words in the singular number include the plural number."

Further, as a part of House Bill No. 1, *supra*, the legislature enacted Section 1.24, Revised Code, reading :

"That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactments."

In the absence of a clear manifestation by the legislature that it intended a change to remedy the situation referred to by my predecessor, I am constrained to follow the interpretation which has heretofore been placed on such section.

I note that both banks mentioned in your request are "national" banks. Section 135.04, Revised Code, provides *inter alia* as follows :

"Any national bank located in this state \* \* \* is eligible to become a public depository, subject to sections 135.01 to 135.23, inclusive, of the Revised Code.\* \* \*"

"\* \* \*

Section 135.06, Revised Code, provides in part as follows :

"Any institution mentioned in section 135.04 of the Revised Code which has an office located within the territorial limits of a subdivision other than a county is eligible to become a public depository of the active public moneys of such subdivision.\* \* \*"

Reading the above two sections of the Code together, it is apparent that any national bank as long as it is located in this state and has an

office located within the territorial limits of a subdivision is eligible to become a public depository. There is no requirement that such office be the "home office" of the bank. Under the provisions of Section 135.10, *supra*, which I have previously discussed, the board of education must allocate the active deposits between the two banks in proportion to the capital funds of the respective banks. Section 135.01 (K), Revised Code, defines "capital funds" as follows:

"(K) 'Capital funds' means, in the case of an incorporated institution, the sum of the following: the par value of the outstanding common capital stock, the par value of the outstanding preferred capital stock, the aggregate par value of all outstanding capital notes and debentures, and the surplus; and in the case of an unincorporated institution, said term means the capital and surplus thereof. In the case of an institution having offices in more than one county, the capital funds of such institution, for the purpose of sections 135.01 to 135.23, inclusive, of the Revised Code, relative to the deposit of the public moneys of each county and *the subdivisions in such county*, shall be considered to be that proportion of the capital funds of the institution which is represented by the ratio which the deposit liabilities of such institution originating at the office located in such county bears to the total deposit liabilities of the institution." (Emphasis added)

Ordinarily a school district is not considered a subdivision of a county, but as used in Sections 135.01 to 135.23, inclusive, of the Revised Code, "subdivision" includes a school district. Section 135.01 (B), Revised Code. In allocating the active deposits between the two banks in proportion to the capital funds of the respective banks, the board of education must follow the provisions of Section 135.01 (K), *supra*. In this case all the offices of both banking institutions are located in the same county in which the school district subdivision is to be located. Therefore, in determining the portion of the active deposits to be placed in the bank which is located within the territorial limits of the subdivision, the apportionment must be based on the capital funds of all the offices of such bank which are located in the same county in which such subdivision is located.

Accordingly, it is my opinion and your are advised:

1. Under the provisions of Section 135.10, Revised Code, where a subdivision has more than one eligible institution within its territorial limits that have made application for the active funds, the governing board

of such subdivision shall award such active deposits to such institutions in proportion to their capital funds. (Opinion No. 1059, Opinions of the Attorney General for 1937, page 1859, approved and followed)

2. Under the provisions of Section 135.01 (K), Revised Code, the governing board of a subdivision, in determining the portion of the active deposits to be placed in an eligible institution within its territorial limits, must apportion such active deposits based on the capital funds of all the offices of such institution which are located in the same county in which such subdivision is located.

Respectfully,

MARK McELROY

Attorney General