

OPINION NO. 75-010

Syllabus:

When more than one bank or building and loan association offer the highest permissible rate for inactive deposits, the governing board in awarding such deposits shall divide and award them in proportion to the respective capital funds of such eligible institutions.

To: Gertrude W. Donahey, Treasurer of State, Columbus, Ohio
By: William J. Brown, Attorney General, February 21, 1975

Your request for my opinion poses the following question:

"When successful bids are received from banks and building and loan associations for inactive funds and such bids are identical and in the aggregate exceed the amount to be deposited, how will the deposits be divided and awards made to the institutions?"

The deposit of public funds by the state or subdivisions is provided for in R.C. Chapter 135, which sets out the Uniform Depository Act. Until recently building and loan associations were not eligible to act as public depositories. However, the enactment of Am. Sub. S.B. No. 141, eff. 1/1/75, has amended R.C. 135.03, et seq., to authorize such deposits. R.C. 135.03 now reads:

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"Any domestic building and loan association as defined in section 1151.01 of the Revised Code

authorized to accept deposits is eligible to become a public depository of amounts of not less than one hundred thousand dollars of inactive deposits and interim deposits only, subject to Chapter 135. of the Revised Code. No building and loan association shall receive or have on deposit at any one time public moneys in an aggregate amount in excess of ten per cent of its total assets, as shown in its latest report to the superintendent of building and loan associations or federal home loan bank board, or one hundred thousand dollars, whichever is greater."

Under R.C. 135.06 an eligible institution desiring to be a public depository of inactive deposits is required to make application for the deposits to the proper governing board within the prescribed period of time. R.C. 135.07 provides for the award of deposits as follows:

"Each governing board, in proceeding to award the inactive deposits of public moneys subject to its control to public depositories, shall estimate the probable amount of public moneys to be so deposited in and among the eligible public depositories applying therefor at the beginning of the period. Such board shall award the inactive deposits of public moneys subject to its control to the eligible institution or institutions offering to pay the highest rate of interest on such deposits permissible at the commencement of the period of designation, in the amount, as to each, specified in the application of the institutions therefor. If two or more eligible institutions offer to pay the same permissible highest rate of interest on amounts so specified, which in the aggregate exceed the estimated amount to be deposited at the beginning of the period, or the maximum amount thereof subject to deposit at any time during such period, the inactive deposits shall be divided and awarded among such eligible public depositories in proportion to their respective capital funds.

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(Emphasis added.)

With respect to your specific questions R.C. 135.07 directs that when several identical bids are highest, but the aggregate of the amounts applied for exceeds the amount to be deposited, the deposits are to be divided and awarded to the eligible depositories with the best bids in proportion to their respective capital funds. Banks and building and loan associations applying for deposits are required to submit with their applications financial statements showing their capital funds as of the date of their latest reports to the Superintendent of Banks, Superintendent of Building and Loan Associations, Federal Home Loan Bank Board, or Comptroller of the Currency, and adjusted to show any changes therein made prior to the date of the application. R.C. 135.08. For purposes of R.C. 135.07 and R.C. 135.08, as well as other provisions in R.C. Chapter 135, R.C. 135.01(C) sets out the following definition of "capital funds":

"(C) 'Capital funds' means 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. 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 135.21 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."

To the extent that this formula for the award of deposits may preclude an institution from enjoying a substantial if any share of the deposits because of the nature of that institution's capital structure, I can only note that when the language of a statute is clear and unambiguous it must be given effect and may not be construed differently. Cleveland Trust Co. v. Eaton, 21 Ohio St. 2d 129 (1970); Sears v. Weimer, 143 Ohio St. 312 (1944); Revesz v. Doehler Jarvis, 14 Ohio App. 2d 156, 160 (1968).

Therefore, in specific answer to your question it is my opinion and you are advised that when more than one bank or building and loan association offer the highest permissible rate for inactive deposits, the governing board in awarding such deposits shall divide and award them in proportion to the respective capital funds of such eligible institutions.