

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1813.

INACTIVE DEPOSITARIES—COUNTY COMMISSIONERS NEED NOT READVERTISE WHERE BANKS AGREED TO TAKE INACTIVE FUNDS IN AMOUNT LESS THAN COMMISSIONERS MUST DEPOSIT—SURPLUS MAY BE DEPOSITED IN ALREADY DESIGNATED BANKS.

SYLLABUS:

Where the county commissioners have advertised for bids for inactive depositaries under section 2716, General Code, and when, after all the banks bidding therefor have been awarded the amounts bid for, there still remains a balance of inactive funds unawarded, the county commissioners may under section 2715-1, General Code, increase the deposits in the banks awarded the first deposits at the same rate of interest, without further advertising, upon procuring additional securities.

COLUMBUS, OHIO, November 3, 1933.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

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

“Section 2715-1 of the General Code, relating to County Depositaries, provides in part as follows:

‘Each Bank or Trust Company when submitting proposals as provided in Section 2716 for inactive deposits shall stipulate the amount of money desired by such bank or trust company; and when the aggregate amount placed with all the banks and trust companies qualifying for same in any county, does not equal the amount that may be placed into inactive depositaries, the County Commissioners shall upon securing sufficient additional security from any or all of such inactive depositaries, authorize the County Treasurer to increase the deposits therein.

My specific inquiry is as to the meaning of the words ‘does not equal the amount that *may* be placed into inactive depositaries.’ Do these words mean the total amount that the different banks that bid for the funds stipulated they desired, or do they mean any amount of money which might be on hand and which the Commissioners desire to have deposited in the inactive depositaries?

In other words, assume that the total amount stipulated by all of the banks bidding that they desired is \$500,000, and suppose it later developed that the County received and had on hand \$100,000 over and

above the \$500,000 on deposit. Could the Commissioners authorize the Treasurer to deposit the additional \$100,000, providing ample security was given, in the depositories already designated, or would it be necessary to readvertise for the additional \$100,000.00?"

The laws relating to county depositories are contained in sections 2715, et seq., General Code. Section 2715, General Code, provides in substance that the county commissioners of each county shall designate, in the manner provided therein, a bank or banks, or trust companies situated in the county, as inactive depositories, and one or more banks or trust companies located in the county as active depositories of the public money of the county. In case no proper bank exists in the county, or fails to bid or to comply with the laws relating to county depositories, any other bank or banks incorporated under the laws of this state or organized under the laws of the United States may be designated as such inactive depository.

Section 2715-1, General Code, referred to in your letter, reads as follows:

"The deposits in active depositories, as provided for in the next preceding section shall at all times be subject to draft for the purpose of meeting the current expenses of the county. The deposits in inactive depositories shall remain until such time as the county treasurer is obliged to withdraw a portion or all of same and place it in the active depository or depositories for current use.

Each bank or trust company, when submitting proposals as provided in section 2716 for the inactive deposits, shall stipulate the amount of money desired by such bank or trust company; and when the aggregate amount placed with all the banks and trust companies, qualifying for same, in any county, does not equal the amount that may be placed into inactive depositories the county commissioners shall, upon securing sufficient additional security from any or all of such inactive depositories authorize the county treasurer to increase the deposits therein; or such county commissioners shall in the manner herein provided designate a bank or banks or trust companies, located outside of the county in which the county treasurer shall deposit such excess funds."

Section 2716, General Code, provides the procedure for competitive bidding for such deposits. The sections immediately following section 2716 provide the procedure of awarding such deposits and prescribe the proper securities for such deposits. Section 2736 General Code, requires the county treasurer to deposit the county money in a bank, or banks, or trust companies, as directed by the county commissioners, and designated as inactive or active depositories of the funds of the county.

The obvious purpose of the enactment of the depository laws was to correct abuses which had theretofore existed in the administration of public funds, and at the same time add thereto a reasonable return by way of interest.

Your inquiry relates to the necessity of readvertising where the several banks agreed to take inactive funds in an amount less than the commissioners must deposit. In this opinion I am concerned solely with inactive depositories, since you do not inquire about active deposits. A careful analysis of section 2715-1, General Code, leads to the conclusion that, if after a proper advertising for bids pursuant to section 2716, General Code, and, if after an award to the banks bidding for such inactive funds, there still remains a surplus to be placed in inactive depositories, the county commissioners are authorized to deposit the

surplus in the banks already designated in the first advertisement without any further advertisement, provided these banks are willing to take such surplus funds and put up the proper security for such funds.

In support of the conclusion above stated, I call your attention to an opinion to be found in the Annual Report of the Attorney General for 1912, Vol. II, page 1460, where the exact question raised in your inquiry was passed upon by the then Attorney General. The third paragraph of the syllabus of that opinion reads as follows:

“When the commissioners have advertised for bids for inactive depositaries, under 2716, General Code, and when after all the banks bidding therefor have been awarded the amounts bid for, there still remains a balance of funds unawarded, the commissioners may, under 2715-1, General Code, either first increase the deposits in the banks awarded the first deposits, upon the procurement of additional security, at the same rate of interest; or may deposit such balance in banks outside the county after advertising for bids as provided in Section 2716, General Code.”

The following appears at page 1464:

“It appears from your letter that the aggregate amount placed with all the banks qualifying for the same does not equal the amount that may be placed in the inactive depositaries. The banks have been given the full amounts for which they bid and qualified for. In such case the county commissioners may pursue either or both of two courses for the deposit of the excess. They may take additional security from the inactive depositaries and authorize the county treasurer to increase the deposits therein; or they may designate, in the manner provided in the depositary act, a depositary outside of the county.

If they pursue the first course, competitive bidding is not required. The rate of interest to be paid will be the same as that offered in the bank's original bid and upon which it was given some of the inactive funds. In order for a bank to secure funds under this provision it must first be an inactive depositary.

If it is desired or necessary to pursue the second course, that is designate a bank or banks outside the county, then the provisions of Section 2716, General Code, as to advertising for bids must be complied with.

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In conclusion, the additional \$100,000.00 may be given to the inactive depositaries without competitive bidding, upon the giving by any or all of them of additional security and by the direction of the county commissioners, at the same rate of interest such banks are now paying, or the county commissioners may readvertise for the letting of such funds and may designate a bank or banks outside of the county as such inactive depositary or depositaries.”

Section 2715-1, upon which the above opinion was predicated, was passed in 1911 (102 O. L. 59), and there have been no changes in this section since it was originally passed. I concur in the conclusion reached in the 1912 opinion, and the reasoning upon which it was based.

It is therefore my opinion, in specific answer to your question, that where the county commissioners have advertised for bids for inactive depositaries under section 2716, General Code, and when, after all the banks bidding therefor have been awarded the amounts bid for, there still remains a balance of inactive funds unawarded, the county commissioners may under section 2715-1, General Code, increase the deposits in the banks awarded the first deposits at the same rate of interest, without further advertising, upon procuring additional securities.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1814.

OHIO SOLDIERS & SAILORS HOME—BURIAL EXPENSES OF INMATE
PAID BY COUNTY FROM WHICH COMMITTED, WHEN ESTATE OF
INMATE INSUFFICIENT TO PAY SAME.

SYLLABUS:

By virtue of Section 3496, General Code, if a soldier who is an inmate of the Ohio Soldiers' and Sailors' Home dies, and does not leave an estate sufficient to cover his burial expenses, the board in control of such institution should pay the expenses of the burial and send an itemized bill of the expenses thereof to the county commissioners of the county from which such indigent person was sent to the institution, and such county should immediately pay such expenses of burial to the board in control of such institution.

COLUMBUS, OHIO, November 3, 1933.

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

GENTLEMEN:—I am in receipt of your request which reads as follows:

"You are respectfully requested to furnish this department your written opinion upon the following:

If a soldier who is an inmate of the Ohio Soldiers' and Sailors' Home at Sandusky dies, and does not leave an estate sufficient to cover his burial expense, is Erie County required to pay the expense of his burial, or is the county from which he was committed, or his last place of residence, required to pay the same?"

Sections 3495 and 3496, General Code, relate to the burial of indigent poor. Sections 3495 and 3496, General Code, were formerly one section, namely, Section 1500a, Revised Statutes, and the codifying commission separated them. These sections now read as follows:

"Sec. 3495. When the dead body of a person is found in a township or a municipal corporation, *and such person was not an inmate of a penal, reformatory, benevolent or charitable institution*, in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical