

In other words, section 7896-55 G. C. provides for an independent levy coordinate in dignity, so to speak, with the four levies mentioned in section 7587 G. C. and subject to all the limitations of the Smith one per cent law unless removed from the operation thereof by a vote of the electors.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1246.

REGISTERED UNITED STATES GOVERNMENT BONDS—WHEN SAME ARE ACCEPTABLE AS SECURITY FOR DEPOSIT OF PUBLIC FUNDS IN MUNICIPAL CORPORATIONS AND SCHOOL DISTRICTS—EXCEPTION TOWNSHIP DEPOSITORIES.

*Except as to township depositories, registered Liberty or other registered bonds of the United States are receivable as security for the deposit of public funds. In order to be so used, however, such registered bonds should be transferred on the books of the United States into the name of the proper officers of the subdivision, subject to trust agreement to be executed by such proper officer, stipulating the purposes for which the legal title is thus assigned and the disposition which such officers are authorized to make of such legal title. In the case of municipal corporations and school districts such bonds may not be so received unless the necessary details for the acceptance of such transfer and the execution of such trust agreement are provided for in the legislation of council or the board of education.*

COLUMBUS, OHIO, May 14, 1920.

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

GENTLEMEN:—You request the opinion of this department upon the following question:

“May the proper public officers accept registered Liberty or other bonds of the United States as surety for the deposit of public funds? If so, how can these be hypothecated by the depository offering them? Can this be legally done by the depository officials executing a power of attorney to the proper custodian to assign the bonds in event of default on the part of the depository?”

The circumstances under which bonds of the United States may be accepted as security for deposits of public funds are set forth in the following statutes applicable to the various subdivisions of the state with respect to which I presume your inquiry is asked:

“Sec. 2722. No award shall be binding on the county nor shall money of the county be deposited thereunder until the hypothecation of the securities hereinafter provided, or until there is executed by the bank or banks or trust companies so selected and accepted a good and sufficient undertaking, payable to the county, in such sum as the commissioners direct, but not less than the sum that shall be deposited in such depository or depositories at any one time.”

“Sec. 2732. In place of the undertaking provided for herein, the com-

missioners may accept as security for money so deposited the following securities:

(a) Bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia;

(b) Bonds of the state of Ohio;

(c) Legally issued bonds of any city, village, county, township or other political subdivision of this state and as to which there has been no default of principal, interest or coupons and which in the opinion of the treasurer are good and collectible, provided the issuing body politic has not defaulted at any time since the year 1880 in the payment of the principal, and interest of any of its bonds."

"Sec. 2734. The hypothecation of such securities shall be the proper legal transfer thereof as collateral which shall stipulate that such securities shall be the property of the county in case of any default on the part of the bank in its capacity as depository, and that the negotiation or release thereof by the commissioners shall require the signature of at least two members of the board of county commissioners."

The foregoing provisions relate to the county depositories.

"Sec. 4295. The council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, or furnish good and sufficient surety, or secure said moneys by a deposit of bonds or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of the state of Ohio or of any other state of the United States; legally issued bonds of any city, village, county, township or other political subdivision of this or any other state or territory of the United States and as to which there has been no default of principal, interest or coupons, and which in the opinion of the treasurer are good and collectible providing the issuing body politic has not defaulted at any time since the year 1900, in the payment of the principal and interest of any of its bonds, said security to be subject to the approval of the proper municipal officers, in a sum not less than ten per cent in excess of the maximum amount at any time to be deposited. And whenever any of the funds of any of the political subdivisions of the state shall be deposited under any of the depository laws of the state, the securities herein mentioned, in addition to such other securities as are prescribed by law, may be accepted to secure such deposits."

This section relates to municipal depositories.

"Sec. 7605. In school districts containing two or more banks such deposit shall be made in the bank or banks situated therein, that at competitive bidding offer the highest rate of interest which must be at least two per cent for the full time funds or any part thereof are on deposit. Such bank or banks shall give a good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, at the option of the board

of education, in a sum not less than the amount deposited. The treasurer of the school district must see that a greater sum than that contained in the bond is not deposited in such bank or banks and he and his bondsmen shall be liable for any loss occasioned by deposits in excess of such bond. But no contract for the deposit of school funds shall be made for a longer period than two years."

The township depository law does not authorize the deposit of bonds as security.

In an opinion to the treasurer of state reported in the Opinions of the Attorney-General for the year 1919, Volume I, page 205, it was held that while, technically, the receipt of registered United States bonds as security for the deposit of state funds was not expressly authorized by the state depository law, yet such receipt was within the fair intendment of that law if a liberal interpretation should be given to it. The treasurer of state was advised respecting the procedure to be followed in the use of such securities for the purpose described.

There are some slight differences between the state depository law and the county depository law, the provisions of which have been quoted and which is the most liberal of the three statutes from which quotation has been made. The differences between the state law and the municipal and school district laws, which are very similar, are perhaps more marked. It would be possible to draw a line either between the state and the county laws, on the one hand, or between the state and county laws considered together and the school district and municipal laws considered together, on the other hand, and hold that whereas the language of the one group of statutes is susceptible to a liberal interpretation, the language of the other is not equally susceptible to such interpretation. Nevertheless, once the principle of liberal interpretation is accepted at all it is believed that it would not be proper to draw such a line. There are technical difficulties in the way of applying any of the statutes mentioned to the use of registered bonds of the United States as security for the deposit of public moneys to which the statutes relate. It would not be profitable to discuss the differences among the statutes; and it is the conclusion of this department that so far as your first question is concerned the proper public officers may accept registered Liberty or other bonds of the United States as security for the deposit of public funds whenever they may accept coupon bonds of the United States for that purpose. This statement will enable county commissioners, boards of education and municipal authorities to accept such bonds for that purpose. Township trustees, as has been observed, are not authorized to accept any bonds as security for the deposit of public funds.

But it is obvious that, the use of registered bonds not being expressly sanctioned by the statute, the method of hypothecation must be carefully safeguarded by the arrangements employed to effect this purpose. In the opinion of this department, nothing short of the procedure outlined in the previous opinion referred to will suffice. The following statement is quoted from that opinion:

"Inasmuch as the state board of deposit must make title to possible purchasers (section 330-7), registered bonds intended to be used for the purpose named should be assigned to and registered in the name of the state board of deposit of the state of Ohio. This is all that can appear on the back of the registered bond. There should, however, be executed in duplicate a trust agreement reciting the assignment and transfer of the bonds to the state board of deposit and their custody by the treasurer of state, and declaring that such assignment and transfer of possession is upon trust to secure the faithful performance of the obligation of the assignor (the depository) to

the state of Ohio under the state depository law; and that the state board and the treasurer of state are faithfully to account, for all interest received on bonds, to the depository so long as it is not in default, and to execute such proper reassignment as may enable the depository to secure again the legal title of the bonds upon the complete discharge of its obligations under the depository contract. The trust agreement should also provide that in the event of default the trustee (the board of deposit and the treasurer of state) should have such power of sale as is provided for by section 330-6 G. C., and power to transfer the legal title of the bonds by assignment, in the manner provided by the regulations of the United States treasury department, to the purchasers at such sales in the manner provided by section 330-7 G. C., accounting, however, to the depository for any surplus in the fund realized from the sale of the bonds and the interest collected and unpaid over the amount due the state and the expenses of the sale."

This paragraph applies *mutatis mutandis* to each of the cases involved in your inquiry. That is to say, the mere delivery of the certificate for the registered bonds accompanied by a power of attorney, as suggested in your letter, is not enough. The bonds must actually be registered in the name of the proper officers of the subdivision on the books of the United States. This will have the effect of vesting complete legal title to the bonds in the proper subdivision; then for the protection of all concerned the trust agreement referred to in the paragraph of the former opinion should be executed in duplicate, one copy to be retained by each party.

In the case of counties the bonds should be registered in the name of and the trust agreement executed by the county commissioners, with a stipulation that the signature of at least two members of the board of county commissioners is sufficient, thus complying with section 2734 of the General Code.

In the case of municipal corporations and school districts greater liberty of action is permitted, in that the council and the board of education respectively have authority to provide for the details. In the exercise of this authority the ordinance of council or the resolution of the board of education may provide what officer of the municipality or school district shall receive the legal title to the bonds and sign the trust agreement and how the legal title shall be transferred.

It is to be observed that, in the absence of proper provision for the receipt and use of registered bonds thus made by the council or the board of education, there would be no authority in any officer of the municipal corporation or school district to receive such bonds. In other words, what has been thus far said respecting the use of such bonds as security for municipal and school deposits must be conditioned upon proper provision being made in the municipal or school legislation for the receipt and handling of such securities. Until such provision is made the proper municipal officers would have no authority to act in the premises.

Respectfully,

JOHN G. PRICE,  
Attorney-General.