

3486.

BOND—GUARANTEEING STATE, STATE INSURANCE AND STATE
TEACHERS' RETIREMENT SYSTEM FUNDS PLACED BY STATE
TREASURER IN BANKS—MUST BE SEPARATE FOR EACH FUND.

SYLLABUS:

It is the duty of the State Treasurer, as custodian of the State Insurance Fund and the State Teachers' Retirement Fund, to require of depository banks a separate bond to secure deposits of each of said classes of funds, from the bond given by said bank to secure the deposit of what are strictly state funds.

COLUMBUS, OHIO, August 6, 1931.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

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

"Section 330-5 of the Ohio General Code, provides that 'all surety company bonds and certificates of deposit shall be made out on blank forms furnished by the Treasurer of State. Said blank forms shall be approved by the Attorney General.'

For a number of years this office has been using a form of surety bond which has been approved by your department and which has always been considered and declared by both attorneys and bonding companies to be 'air tight.'

It has always been a custom of this department in the past, to furnish a separate form for surety bonds to secure funds known as state deposits, state insurance deposits and state teachers' retirement system deposits and it has been claimed at times that it would not be possible to include more than one deposit in one bond; that is, to write a bond on this form which would apply to more than one of these three funds.

The question has frequently been raised as to whether or not it would be possible to use a form of bond which would cover deposits of any one or all of these three funds in one bond possibly by wording it so as to cover 'funds of the state of Ohio and any other funds of which the Treasurer of State is by law designated as custodian.'

We would request that you investigate this matter and advise us if it would be possible to use this form of bond and make it so that it would apply to any one or all three of these funds.

This would be of great convenience, not only to this office but also to the banks and bonding companies, because under our present system in case a deposit is transferred from one fund to the other, it is necessary to substitute a new bond covering that special fund to which the deposit is transferred."

By force of Section 1465-56, General Code, the Treasurer of State is constituted custodian of the State Insurance Fund, the Occupational Disease Fund and the fund for the investigation of industrial accidents and diseases. The said funds are trust funds contributed by employers, as that term is defined in Section 1465-60, General Code, for the uses and purposes of the Industrial Commission of Ohio, in the administration of the so-called Workmen's Compensation Law.

The State Treasurer is also constituted by statute, the custodian of the funds of the State Teachers' Retirement System of Ohio, which funds are trust funds for the uses of the State Teachers' Retirement Board in the administration of the State Teachers' Retirement Law. See Section 7896-13, General Code.

With reference to each of the said funds mentioned, the law directs the treasurer, as custodian of the funds, to deposit such portion of the funds not needed for immediate use, "in the same manner and subject to all the provisions of law with respect to the deposit of state funds of such treasurer" and all interest earned by such portion of the funds deposited shall be credited to the respective funds. See Sections 1465-57 and 7896-13, of the General Code.

The manner of depositing state funds by the State Treasurer and the provisions of law with respect thereto, are set forth in sections 321 to 330-11, of the General Code, of Ohio.

A State Board of Deposit is provided for, which board, after receiving applications of banks and trust companies for the deposit of the moneys of the State, shall pass on the eligibility of said applicants and either approve or reject the applications.

All awards for the deposit of state funds shall be made by the treasurer upon competitive bidding. Bids are to be received every two years, and no award for the deposit of state moneys may be made to any bank or trust company other than one which has been approved by the State Board of Deposit. Section 330-3, General Code, provides that the Treasurer of State before making any deposits of state moneys, shall require each and every approved bank or trust company to which an award is made to deposit with him certain designated securities

"or surety company bonds, which when executed shall be for an amount equal to the amount deposited plus 5%, conditional for the receipt and safe keeping and payment over to the treasurer of state or his written order of all moneys which may come into the custody of such bank, or trust company under and by virtue of the provisions of sections 321 to 330-11, inclusive, of the General Code, * * * And further, said bonds so given shall include a special obligation to settle with and pay to the treasurer of state for the use of the state, interest upon daily balances on said deposit or deposits, at the rate bid for, but not less than 3% per annum for inactive deposits and 2% per annum for active deposits (on a 365 day basis) payable quarterly on the first Monday of February, May, August and November of each year, or any time when withdrawals are made or the account is closed."

The law does not specifically require that banks and trust companies receiving deposits of state insurance funds or teachers' retirement funds, upon award made by the State Treasurer, give separate and additional bonds to the bonds given to secure the deposits of other state funds, if and when these different classes of funds are deposited with them; by clear implication, however, the legislature has, in my opinion, so directed. To insure the safe-keeping of each of these funds the legislature provided that the treasurer must give not only an additional bond but a separate bond from his bond as State Treasurer, conditioned upon the faithful performance of his duties as custodian of each of the said funds. See Sections 1465-59a and 7896-13, of the General Code.

The fact that the legislature saw fit to require a separate bond for the treasurer to guarantee his faithful performance of duty with respect to the state funds, the State Insurance Fund and the State Teachers' Retirement Fund, clearly evinces

the legislative intent, in my opinion, that each of these funds is to be kept strictly and entirely separate, and that no union of the funds for any purpose, is permitted.

The State Insurance Fund and the Teachers' Retirement Fund are not, strictly speaking, state funds. Each of these funds is a trust fund, the uses and purposes of the trusts with which they are charged being entirely separate and distinct from each other and from funds existing for state purposes. For this reason the administration of each of said funds should be kept entirely separate and distinct from that of the others. With this in mind, the legislature took precaution, in order to avoid any overlapping of interest in case of a loss or default on the part of the treasurer, to require that he give a separate bond for each of the funds.

To give full effect to this clear legislative intent, and avoid any possible controversy in case of default on the part of the bank having deposits of more than one of these classes of funds, a separate bond should be executed for each of the classes of deposits. Moreover, ever since the enactment of the laws relating to the deposit of both the State Insurance Fund and the State Teachers' Retirement Fund, separate bonds have at all times been required from depository banks to secure the deposit of these funds and the funds which are strictly state funds. This fact alone lends some support, at least, to the conclusion that such was the intent of the law. It has been held in this state that "administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do." *State ex rel. v. Brown*, 121 O. S. 73; *Industrial Commission v. Brown*, 92 O. S. 309; *State ex rel. Brower v. Graves*, 89 O. S. 24. See also 36 Cyc. 1140; 25 R. C. L. 1043.

I am therefore of the opinion that it is the duty of the State Treasurer, as custodian of the State Insurance Fund and the State Teachers' Retirement Fund, to require of depository banks a separate bond to secure deposits of each of said classes of funds from the bond given by said bank to secure the deposit of what are strictly state funds.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3487.

APPROVAL, PETITION CONTAINING SUMMARY OF AMENDMENT TO
OHIO CONSTITUTION.

COLUMBUS, OHIO, August 7, 1931.

CHARLES H. HUBBELL, ESQ., 10401 *Almira Ave.*, *Cleveland, Ohio.*

DEAR SIR:—You have submitted for my examination a written petition signed by 100 qualified electors of this state, containing a measure to be referred and a summary of the same, under the provisions of Section 4785-175, General Code, as amended by the 89th General Assembly. This section provides in part as follows:

"Whoever seeks to propose a law or constitutional amendment by initiative petition or to file a referendum petition against any law, section, or item in any law, shall by a written petition signed by one hundred qualified electors submit such proposed law, constitutional amend-