

deposit such reserve in the bank or banks, incorporated under the laws of this state or of the United States, situated within the county, which offer, at competitive bidding, the highest rate of interest and best security and accommodation and give a good and sufficient bond issued by a surety company authorized to do business in this state, or furnish good and sufficient surety in a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited. There shall not be deposited in any one bank an amount in excess of the paid-in capital stock and surplus of such bank, or to exceed in amount four hundred thousand dollars except when such moneys are deposited for the purpose of meeting the payment of some obligation.'

Question. Must the amount of surety bonds given by a depository as security for the funds under the control of the sinking fund trustees, be 20% in excess of the maximum amount to be deposited?"

I have not been able to find a judicial interpretation of the section which you quote. The question presented, of course, is whether or not the phrase "in a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited" modifies both kinds of sureties mentioned in said section. In view of the punctuation of this sentence of which the phrase is a part it could logically be argued that it does not modify surety company, referred to in the sentence, but only has application to the good and sufficient surety referred to following the conjunction "or" which follows the phrase relating to the surety company.

However, the intention of the Legislature is the controlling factor in interpreting a statute. One of the essential elements necessary in the execution of a bond is to have a definite sum for which the parties bound are answerable in case of default. If the phrase hereinbefore referred to does not apply to the bond executed by a surety company under the provisions of said section then there is no amount fixed for such surety bond. It is believed that such a construction is not tenable. On the other hand, the common sense analysis of the section would require the phrase under consideration to apply to both of the sureties mentioned. In other words, it is the intent of said section that the bond offered by the depository shall be either a surety bond in a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited or other good and sufficient surety in the same sum.

In specific answer to your inquiry, it is my opinion that where a surety executes a bond under the provisions of Section 4515 of the General Code the same must be for a sum not less than twenty per cent in excess of the maximum amount at any time to be deposited by the sinking fund trustees.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2164.

APPROVAL, BONDS OF VILLAGE OF OTTAWA HILLS, LUCAS COUNTY,
OHIO—\$27,083.59.

COLUMBUS, OHIO, July 26, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.