

5029.

FEDERAL RESERVE SYSTEM—MEMBER BANK UNAUTHORIZED TO PAY INTEREST ON PUBLIC FUNDS WHEN.

SYLLABUS:

1. *By the terms of Section 324 (c) of "The Banking Act of 1935" (Sec. 371a, U. S. C. A.) enacted by Congress, and which was approved by the President and became a law on August 23, 1935, member banks of the Federal Reserve System are prohibited from, directly or indirectly by any device whatsoever, paying any interest on any deposit of public funds payable on demand, after August 23, 1937, whether the payment of interest on such deposits is required by state law or not.*

2. *By reason of the provisions of "The Banking Act of 1935", and the laws of Ohio providing for county depositories of county funds, member banks of the Federal Reserve System, are precluded at this time from bidding for the receipt of deposits of county funds payable on demand, and boards of county commissioners are without authority to contract at this time with such banks as county depositories.*

3. *Boards of county commissioners are without authority to contract for the deposit of county funds in banks or trust companies, in any manner other than that prescribed by the statutes of Ohio.*

COLUMBUS, OHIO, December 23, 1935.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion concerning the legality of a certain bid received by the commissioners of Warren County in response to their advertisement for bids for the deposit of county funds, and the right of the commissioners to accept the said bid and award thereon a contract for the county depository.

It appears that the commissioners adopted a resolution as provided by law, inviting bids for a county depository for county funds and duly advertised the same according to law. The said resolution of the board of commissioners and the advertisement for bids made in pursuance thereof, stipulated that bidders must state in their bids the rate of interest that will be paid on average daily balances on both active and inactive deposits of county moneys deposited in the said bank or trust company should said bank or trust company be designated by the board of commissioners of Warren county as a depository of county funds, and also the surety or securities, or both, that will be offered to the county to secure the deposits in case the proposal is accepted, and the amount of money desired by the bidder. It was further stipulated:

“All proposals must be made in accordance with the depository law, Sections 2715 to 2745, both inclusive, of the General Code of Ohio, and the acts amendatory and supplemental thereto.”

In response thereto, a bid was received from a certain bank located in the county seat of Warren county, for the deposit of the funds of said county for a period of three years as provided by the resolution of the board of commissioners and its advertisement for bids. The said bid stipulated, among other things:

“This Bank will pay interest, computed on average daily balances on all active deposits, at the rate of one-tenth of one percent per annum to August 23, 1937.

This bank will pay interest, computed on daily balances not exceeding \$150,000.00 of inactive funds, at the rate of one-fourth of one per cent per annum to August 23, 1937.

* * * * *

This proposal is made in accordance with your published ‘Notice to Banks’, for deposits of county funds; all with the understanding that no interest will be paid on demand deposits after August 23, 1937, this being in accordance with the present existing National Banking Act of 1935; and with the further understanding that this bid shall be subject to modification in the event of a change in the Federal and State laws that may hereafter be enacted affecting such deposits.”

No question is made as to the quality or amount of security offered by the bidder in question, in the event it is awarded the funds of the county. The entire question presented is whether or not by reason of the fact that this bidder expressly stipulated in its bid that no interest would be paid on demand deposits after August 23, 1937, and further stipulated that the bid is subject to modification in the event of a change in the law, it is a legal bid and whether it may be accepted by the board of commissioners and a depository contract awarded in pursuance thereof.

It has long been recognized that a county in this state organized and functioning under general laws, is not a public corporation in the sense of its being a municipal corporation. At best, it is a quasi-corporation. It is not vested with any of the attributes of sovereignty but is merely a territorial division of the state for purposes of political organization and civil administration in public affairs. *Railroad Company vs. Commissioners of Clinton County*, 1 O. S., 77.

At present, under and by force of Article 10 of the Constitution of Ohio as recently adopted, counties in this state may become possessed of certain

attributes and powers beyond those of a mere quasi-corporation by the adoption of a charter. I understand, however, that Warren county has not adopted a charter and functions under general laws as it has done since its organization. We must therefore judge its powers and those of the board of commissioners of the county in accordance with the rules established and followed by the courts as being applicable to counties and boards of county commissioners which function under general laws.

It has long been the settled rule that boards of commissioners of counties being creatures of statute are bound by the statutes creating them and the statutes vesting them with power to act in civil administration. The courts of this state have consistently held that boards of county commissioners have such powers and such only as are expressly granted by statute, together with such so-called implied powers as are necessary to carry out the express powers granted. See *Commissioners vs. Holcomb*, 7 Ohio, Pt. 1, 232; *Jones vs. Commissioners*, 57 O. S., 189; *Commissioners vs. Oates*, 83 O. S., 19; *Peter vs. Parkinson*, 83 O. S., 36; *Elder vs. Smith*, 103 O. S. 369. Implied power is incident to an express power and if there is no express power there can be no implied power. *State vs. Pierce*, 96 O. S., 44. It has also been held that a grant of power to a quasi-corporation must be strictly construed and when acting under a special power it must act strictly on the conditions under which it was given. *State ex rel. vs. Commissioners*, 11 O. S., 183.

Boards of county commissioners are directed by statute to provide for the deposit of county funds in some bank or trust company willing and able to accept such deposits and pay interest thereon, and furnish proper security therefor according to law. The manner of selecting such depository and other matters relating thereto, are set forth in Sections 2715 et seq., of the General Code of Ohio. It is there provided that after due advertisement for two consecutive weeks bids shall be received by the commissioners from banks or trust companies desiring the said deposits, which bids must state the rate of interest that will be paid on both active and inactive deposits in case the bidder is awarded a contract for such deposits, also the amount of money desired and the security offered. (Sections 2715, 2715-1 and 2716, General Code). After the bids are received and opened, the commissioners are directed to award the contract for the said deposits, both active and inactive deposits, to the bidder offering to pay the "highest rate of interest", providing such bidder meets other requirements of law as to providing security, etc.

Section 2729, General Code, provides that upon the acceptance by a board of county commissioners of a bid of a bank or trust company for the deposit of county funds and the furnishing by the bank or trust company of proper security for said funds as provided by law, the said bank or trust company shall become the depository of the money of the county and remain such for a period of three years or until the undertaking of its successor or successors is accepted by the commissioners.

The phrase "highest rate of interest" as used in statutes relating to public depositories has been held to import the payment of some interest. This expression is found in Section 7605, General Code, where provision is made for the awarding of contracts by boards of education for school depositories. In an opinion of this office found in the reported *Opinions of the Attorney General for 1934*, page 10, it is held :

"A state statute, such as Section 7605, General Code, requiring that a contract for the deposit of public funds be awarded to the bank or banks offering the highest rate of interest, implies the payment of interest in some amount, although no minimum rate is stated, and such statute is a state law requiring the payment of interest within the meaning of the proviso contained in Section 11b of the Banking Act of 1933."

In the same volume, at page 282, it is said :

"The phrase 'highest rate of interest' is not equivalent, however, to no interest. It imports the paying of some interest, be it ever so little."

And again, on page 12 of said volume, it is held :

"4. The state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the authorities of municipal corporations are not permitted, under the several depository laws of this state, to enter into contracts with banks or trust companies for the deposit of the public funds under their control, without interest.

5. Where public authorities, such as the state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the proper awarding authority of municipal corporations are unable to make awards of deposits of the public funds under their control, by reason of their failure to receive bids therefor from a bank or banks or a trust company willing and able to pay interest on said funds as provided by law and to secure the deposits in the manner prescribed by the statutes, of the state of Ohio, after due advertisement therefor, they are without power to enter into depository contracts for the deposit of their funds."

From a consideration of the statutory authority granted to boards of county commissioners with respect to the awarding of contracts for county depositories, as contained in the statutes noted above, it clearly follows that

such contracts are to be entered into for a period of three years and that provision must be made therein for the payment of some interest for the entire period. No authority exists for the making of such contracts otherwise and in the absence of such authority the commissioners are without power to make contracts otherwise than in the manner prescribed by the statutes.

The act in question also contains a provision to the effect that "this bid shall be subject to modification in the event of a change in the federal or state laws that may hereafter be enacted affecting such deposits."

The above provision of the bid clearly makes the bid irregular and constitutes a condition in the bid that precludes the county commissioners from lawfully entering into a contract with the bidder. In *Opinions of the Attorney General for 1934*, page 1240, a similar question was considered, and it is there held:

"1. When the board of county commissioners have advertised for bids for a county depository and in response thereto received a bid or bids at a lawful rate of interest, but subject to a reservation of the right to the bidder to alter the depository contract in the event of a change in the depository statutes; such reservation attached to the bid renders the bid void. It may not be accepted to create a depository on such terms (Section 2716, General Code).

2. When the board of county commissioners accepts a bid, void or illegal because of its terms, for a county depository, a contract executed embodying the terms of such bid is a nullity and does not create a depository even though other statutory provisions with reference to the establishment of county depositories are complied with."

I am therefore of the opinion that the county commissioners of Warren county may not lawfully accept the bid in question, and enter into a contract with the bank which made the bid for the deposit of county funds.

It may well be noted that banks which are members of the Federal Reserve System are precluded from bidding for the deposit of public moneys which under the law require public depositories to pay interest on said moneys after August 23, 1937.

In Section 324c of the Banking Act of 1935 (371a, U. S. C. A.) it is provided:

"No member bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand;

* * *

Provided further, that until the expiration of two years after August 23, 1935, this paragraph shall not apply to * * or, (2) to

any deposit of public funds made by or on behalf of any state, county, school district or other subdivision or municipality, or to any deposit of trust funds if the payment of interest with respect to such deposit of public funds or of other trust funds is required by state law."

By the term "member bank" as used in the paragraph of the Banking Act of 1935, quoted above, is meant any bank which is a member of the Federal Reserve Banking System. The fact is, that all national banks, and a very large proportion of state banks are members of the Federal Reserve System. The result is that a depository contract for the deposit of county funds or of any other funds, upon which, under the law of this state interest is required to be paid by public depositories, cannot be made with any member bank of the Federal Reserve System for a period longer than until August 23, 1937, and said member banks are precluded from bidding for such deposits for a period longer than until August 23, 1937, inasmuch as all such deposits are demand deposits within the meaning of the term as used in that paragraph of the Banking Act of 1935 quoted above.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5030.

COUNTY COMMISSIONERS—MAY LEASE LAND ONLY
ADJACENT TO COUNTY HOME WHEN.

SYLLABUS:

County Commissioners have no authority to lease farm lands for the purpose of raising food for the county home if such lands do not adjoin the existing site of the home.

COLUMBUS, OHIO, December 24, 1935.

HON. ALVIN F. WEICHEL, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

"The Board of County Commissioners of Erie County, Ohio, are desirous of renting or leasing farm lands, not adjoining the County Home, for the purpose of raising food stuffs for the County Home and feed for cattle and hogs raised for the use of the County