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COUNTY COMMISSIONERS—UNAUTHORIZED TO ACCEPT REAL ESTATE MORTGAGES ON PROPERTY LOCATED OUTSIDE OF OHIO—ONLY SECURITIES OF TYPE SPECIFIED IN STATUTES MAY BE ACCEPTED—DEPOSITORY CANNOT RESCIND CONTRACT AFTER BANKING HOLIDAY WHEN IT HAS RE-ACKNOWLEDGED ITS OBLIGATION THEREON.

*SYLLABUS:*

1. *The board of county commissioners has no authority to accept real estate mortgages on property located outside of Ohio either as the whole security for county deposits in a depository or in conjunction with an undertaking pursuant to the provisions of Section 2733, General Code, as partial security therefor.*

2. *Section 2733, General Code, which authorizes the acceptance by the board of county commissioners as security for a county depository of securities in part and an undertaking in part, only authorizes such board to accept securities of the types specified in Sections 2732, 2288-1, and 4295, General Code.*

COLUMBUS, OHIO, JUNE 21, 1933.

HON. RUSSEL E. LYONS, *Prosecuting Attorney, Coshocton, Ohio.*

DEAR SIR:—Your recent request for opinion reads as follows:

“This office respectfully requests your opinion as to whether the Commissioners of Coshocton County may lawfully accept as additional security for deposit of county funds, first mortgage bonds of Canadian National Railway, Grand Trunk Railroad and/or Columbia Gas and Electric Company.

The question arises under the following circumstances: On October 3, 1931, after advertisement, contracts for deposit of active and inactive funds were awarded in certain proportions to five Coshocton County banks. The deposits were secured in each case by personal undertaking. Early in March, 1933, the Board of Commissioners adopted a resolution requiring each of such depositories to furnish additional security in the form of “collateral properly hypothecated in such amount that the funds on deposit in such Bank shall not exceed ninety (90%) per cent of such collateral. Provided, however, that said banks shall be permitted from time to time with the approval of this board, to substitute one form or item of such collateral for another lawful form or item of collateral.”

The bank offering the above-mentioned bonds has acted as depository of active and inactive funds and is a National Bank. It offers these bonds as part of its collateral and first mortgages on Ohio real estate in part and proposes to continue the existing personal undertaking. Can the bonds above mentioned be accepted? Does the fact that they are offered as additional and not as original security make any difference in their acceptability?

We are familiar with the contents of your opinion No. 228 of March 18, 1933, but feel that the facts above mentioned are sufficiently distinguished that we should be pleased to have your opinion based upon them as to the questions mentioned.”

The legal right of county officers to deposit county funds in a bank exists only by reason of express legislative enactment. The legislature alone has the authority to empower a public official to make such deposit. (*Fidelity & Casualty Company vs. Union Savings Bank*, 119 O. S. 124.) The legislature has expressly granted such power to county officers upon certain terms and conditions. See Sections 2715 to 2745, General Code.

In the case of *Frisbie Company vs. The City of East Cleveland*, 98 O. S. 266, the court laid down the rule that when the legislature grants the power to a municipal body to do an act in a specific manner the manner specified is likewise the limitation of power of such municipality. The first paragraph of the syllabus of such opinion reads:

“Where a statute prescribes the mode of exercise of the power therein conferred upon a municipal body, the mode specified is likewise the measure of the power granted, and a contract made in disregard of the express requirements of such statute is not binding or obligatory upon the municipality.”

See also *City of Lancaster vs. Miller*, 58 O. S. 558; *Zohman vs. San Francisco*, 20 Cal. 96.

Since you raise no question in your inquiry, concerning the creation of the depository, I am assuming, for the purposes of this opinion that it was in all respects legal, that the personal undertaking given by the banks at that time, was in compliance with the provisions of such sections.

Section 2724, General Code, authorizes the depository to substitute a new undertaking for the old, when the deposits are increased, or to substitute securities for the former undertaking.

Section 2730, General Code, *infra*, authorizes the board of county commissioners to require additional securities from the depository under penalty of rescission of the depository agreement and the removal of the deposits from the depository.

Section 2733, General Code, authorizes the county commissioners to accept an undertaking for part and the deposit of securities for the remainder of the security of public deposits. Such section reads:

“Deposits may be made in the depositories up to ninety per cent of the market value of such securities. The county commissioners may accept such securities as partial security and require an undertaking for the remainder of the full amount of security required by law, and in such undertaking such acceptance and the extent thereof shall be set forth.”

Section 2732, General Code, defines the type of securities which may thus be accepted by the board of county commissioners. Such section reads:

“In place of the undertaking provided for herein, the commissioners 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; and the farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto;

(b) Bonds of the state of Ohio;

(c) Legally issued bonds or notes 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."

In addition to the securities provided in Section 2732, General Code, the board of county commissioners may accept real estate first mortgages on *Ohio real estate* by reason of the provisions of Section 2288-1, General Code.

Section 4295, General Code, describes certain other securities which may be accepted as security for deposits in a public depository.

While you do not expressly so state, from the nature of your inquiry, I have assumed that the first mortgage bonds of the Canadian National Railway, Grand Trunk Railroad and the Columbia Gas & Electric Company, referred to in your inquiry, are not secured by Ohio real estate but are secured by real estate located in another state.

From an examination of the statutes cited above, it is apparent that the legislature has given no express authority to the board of county commissioners to accept any mortgage securities as security for county depositories; except those which are a lien on Ohio real estate. The practical difficulty of the foreclosure or enforcement of such liens on real estate in foreign states may have been in the legislative mind at the time of the enactment of section 2288-1, General Code, or it may have considered it to be impractical to require county officers to have a proper assignment to the county, recorded in a foreign state. Whatever may have been the purpose of the legislature, I am unable to find any language in such section from which an intent on the part of the legislature to authorize the acceptance by the board of county commissioners of mortgage securities by foreign real estate could be inferred.

Relative to your inquiry as to whether the fact that the securities were being offered as "additional security" rather than "original security" the authority for such deposits is Section 2730, General Code, which is a part of the chapter of the code which has reference to county depositories. The section defining the types of securities acceptable by the board of county commissioners for county depositories are evidently equally definitive of such additional securities as they are of original securities for such deposits. There is no language in such sections which would limit their provisions to original securities.

In reply to your third inquiry, as to whether when the original undertaking was renewed after the banking holiday and at that time new securities were deposited such acts would affect the original depository contract, under the provisions of Section 2729, General Code, the depository agreement would exist for a three year period, unless terminated by the county commissioners as provided by statute (Section 2730, G. C.). There are provisions of statute authorizing the county commissioners to require additional security to be deposited as security for a depository (Section 2730, G. C.) However, I am unable to find any provision of statute from which authority could be inferred for the rescission of the depository agreement by the depository bank when an agreement had been entered into by the bondsmen re-acknowledging the obligation of the bond and the depositing of additional securities for the security of such deposit. The act of the bank in the depositing of the additional securities would at least infer a consent to such alteration of the contract as might be made by such act, if

not, operate as an estoppel to assert any defense which might otherwise exist. I do not desire to be understood as implying that such acts amounted to a violation of the depositary agreement, but if so construed the act of the bank would operate as a consent thereto, or an alteration by mutual agreement. I am therefore of the opinion that your third inquiry should be answered in the negative.

Specifically answering your inquiries, it is my opinion that:

1. A board of county commissioners has no authority to accept real estate mortgages on property located outside of Ohio either as the whole security for county deposits in a depositary or in conjunction with an undertaking pursuant to the provisions of Section 2733, General Code, as partial security therefor.

2. Section 2733, General Code, which authorizes the acceptance by the board of county commissioners as security for a county depositary of securities in part, and an undertaking in part, only authorizes such board to accept securities of the types specified in Sections 2732, 2288-1 and 4295, General Code.

3. When, after the banking holiday of March, 1933, the sureties on a county depositary bond re-acknowledge their obligation thereon and at the same time the depositary bank deposits securities as additional securities for the purpose of remaining qualified to act as a county depositary, such bank cannot thereafter set up such acts as a ground for the rescission of the depositary agreement.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

982.

TOWNSHIP TRUSTEES—MAY ACCEPT SECURITIES ISSUED BY SUCH TOWNSHIP IN SUBSTITUTION OF SECURITIES DEPOSITED WITH THEM AS SECURITY FOR TOWNSHIP DEPOSITARY—DISCUSSION OF LIMITATIONS ON SUCH SUBSTITUTION.

*SYLLABUS:*

1. *The board of trustees of a township may, by virtue of the provisions of Section 4295, General Code, accept securities of the types therein defined, including securities issued by such township, in substitution of other securities theretofore deposited with them as security for a township depositary, if the bank or its conservator offers them, when in the opinion of the board of township trustees the interests of the township are not prejudiced thereby.*

2. *The board of township trustees, with which, as security for a township depositary, bonds of such township have been deposited, may not enter into an agreement to accept such securities not yet due, in payment of the funds on deposit with such depositary, except to the extent that the moneys in such depositary are funds of a township sinking fund, since such transaction would be tantamount to a purchase of such securities, and is beyond the power granted by the board.*

COLUMBUS, OHIO, June 21, 1933.

HON. S. L. CHENEY, *Prosecuting Attorney, Geauga County, Chardon, Ohio.*

DEAR SIR:—Your recent request for opinion reads as follows:

“The Trustees of Russell Township in Geauga County have on deposit in The C. Bank, which bank is under the supervision of a con-