To the same effect is *Steel Co.* vs. *Oberlander,* 109 O. S. 592, at pages 596 and 597:

> "It is the province of the court to construe and interpret statutes only when the language employed is ambiguous and the meaning and application thereof uncertain. If the provisions of a statute are plain and unequivocal, there is no occasion for construction or interpretation; nor, under such circumstances, is it the province of the court to consider or attempt to determine what the Legislature should have enacted, nor even what it may have intended to enact."

In view of the foregoing, I am constrained to advise that in my opinion the failure of the present General Assembly to appropriate student fees received by Kent State University for the purposes of that university, however inadvertent such failure may have been, constitutes an omission which may not be supplied by the courts and that the remedy lies exclusively with the General Assembly.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1059.

DESIGNATION OF PUBLIC DEPOSITORY FOR ACTIVE COUNTY FUNDS.

SYLLABUS:

1. *Under the New Uniform Public Depository Act, namely Sections* 2296-1 2296-25, *General Code, inclusive, an eligible institution within a subdivision other than a county has a preferential right to the active funds of such subdivision.*

2. *An eligible institution located in the county seat of a county has a preferential right to the active funds of the county.*

3. *In case the subdivision has no eligible institution within its territorial limits or the county has none at its county seat, then the governing board of such subdivision or county shall designate another or other eligible depositories of the active funds of the subdivision or county, as the case may be, conveniently located.*

4. *In case the subdivision or county seat has more than one eligible institution within its territorial limits that have made application for the*

active funds, the governing board shall award such active deposits to such institutions in proportion to their capital funds.

5. *The fact that such an allocation may result in placing the pay roll account of the subdivision or county in more than one institution, and thereby detract from convenience and efficiency, does not obviate the necessity for following this provision. The remedy lies within the legislative branch of government.*

6. *Charter cities and charter counties having special provisions respecting the deposit of their public moneys are excepted from the provisions of the New Uniform Public Depository Act, as will be noted from subsection (b) of Section 1 of the Act, now Section 2296-1 General Code. There is a typographical error in this exception—namely, "Article 1" should be "Article 10."*

To the extent that charter cities and charter counties have made proper provision for the deposit of their public funds, the New Uniform Depository Act has no application. To the extent that such charter cities and charter counties have not made proper provision for the deposit of their public funds, said Act is applicable.

COLUMBUS, OHIO, August 25, 1937.

HON. FLOYD A. COLLER, *Prosecuting Attorney, Bowling Green, Ohio.*

DEAR SIR: I acknowledge receipt of your communication of recent date as follows:

> "Section 2296-6 of the General Code, beginning with the second sentence thereof, reads as follows:
>
> > 'Any institution mentioned in Section 4 of this act which has an office located within the territorial limits of a subdivision other than a county, shall be eligible to become a public depository of the active public moneys of such subdivision; *and any such institution having an office in the county seat shall be eligible to become a depository of the active deposits of the moneys of the county.*' Italics by me.
>
> The question has arisen in this county as to whether, under the above section, any banks outside the county seat are eligible to receive deposits of active county funds, if the only bank located in the county seat makes a bid for all of it? Can the County Commissioners, in such a case, allocate part of it only to the bank in the county seat and distribute the rest to the banks throughout the county, or must they allocate it all to the bank in the county seat, said bank having

complied with the other provisions of the depository laws and having made a bid for all available active funds?

If the banks outside the county seat, under such circumstances are eligible to receive part of the active fund is it discriminatory with the County Commissioners just what part they may receive, or must the amounts be regulated according to their capital stock or some other such formula?"

The first question that concerns any governing board considering the deposit of public funds, is the eligibility of the institution or institutions bidding for their moneys. I quote in full the section dealing with eligibility, viz.:

Section 2296-4, *General Code.*

"Any national bank located in this state, and any 'bank' as defined by Section 710-2 of the General Code, subject to inspection by the division of banks, department of commerce, of this state, and any title guaranty and trust company subject to inspection by the auditor of state pursuant to Section 710-171 of the General Code shall be eligible to become a public depository, subject to the provisions of this act. No such institution shall apply for, receive or have on deposit at any one time public moneys as herein defined other than active deposits of public moneys of the state in aggregate amount in excess of the greater of the two amounts hereinafter described, to-wit: (1) its capital funds as herein defined; and (2) thirty per centum of the average of its total deposit liabilities as revealed by its reports to the superintendent of banks or the comptroller of the currency, or auditor of state, as the case may be, made during the twelve months next preceding the date when this limitation shall be applied; provided however that the limitation shall not affect the validity of any application, award or deposit made pursuant to this act, excepting to the extent hereinafter expressly stated."

Capital funds are defined as follows by Section 2296-1, subsection (k):

"(k) 'Capital funds' means, in the case of an incorporated institution, the sum of the following: the par value of the outstanding common capital stock, the par value of the outstanding preferred capital stock, if any, the aggregate

par value of all outstanding capital notes and debentures, if any, and the surplus; and in the case of an unincorporated institution said term means the capital and surplus thereof; but in the case of an institution having offices in more than one county, the capital funds thereof, for the purpose of all the provisions of this act relative to the deposit of the public moneys of each county and the other subdivisions therein, shall be considered to be that proportion of the capital funds of the institution which is represented by the ratio which the deposit liabilities thereof originating at the office or offices located in such county bears to the total deposit liabilities of the institution."

I likewise quote so much of Section 2296-6, General Code, as deals with active accounts, viz.:

"* * * Any institution mentioned in section 4 of this act (Sec. 4 now carries Code Section 2296-4) which has an office located within the territorial limits of a subdivision other than a county, shall be eligible to become a public depository of the *active public moneys* of such subdivision; and any such institution having an office in the county seat shall be eligible to become a depository of the active deposits of the moneys of the county. In case there is no such eligible institution, or in case the aggregate deposits of the public moneys of the subdivision applied for by such eligible institution or institutions is less than the aggregate maximum amount to be deposited as such, as estimated by the governing board, the governing board of the subdivision may designate as a public depository or depositories of the active deposits of the public moneys thereof, one or more institutions of the kind mentioned in Section 4 (G. C. Sec. 2296-4) of this act, which are conveniently located." (Parenthesis and italics, writer's.)

Section 2296-10, General Code, provides how active funds shall be allocated to depositories in cases where more than one eligible institution applies for the active funds. It is too lengthy to quote in its entirety and I shall quote only so much of it as I deem pertinent to your question, viz.:

"* * * Such governing board shall award the active deposits of public moneys subject to its control to the insti-

tution or institutions eligible to receive the same in proportion to their capital funds, excepting that no such public depository shall thereby be required to take or permitted to receive and have at any one time a greater amount of active deposits of such public moneys than specified in the application of such depository; and if, by reason of said limitation or otherwise, the amount of active public moneys deposited or to be deposited in a public depository, pursuant to an award made under this section, is reduced or withdrawn, as the case may require, the amount of such reduction or the sum so withdrawn shall be deposited in another eligible institution or institutions applying therefor and eligible to receive the same; and thereafter, or if there be no such eligible institution, then the amount so withheld or withdrawn shall be awarded or deposited for the remainder of the period of designation in accordance with the requirements of this act."

While Section 2296-6, General Code, does not specifically state that an institution mentioned in Section 4 of the Act, within the subdivision or the county seat, as the case may be, has a paramount right to the active funds of the subdivision or county to the extent of its qualifications, nevertheless the language of the Section does seem to indicate that such was the legislative intent. It states in substance that such an institution having an office within the territorial limits of a subdivision other than a county *shall be eligible to become a public depository of the active public funds of the subdivision,* and any such institution having an office in the county seat *shall be eligible to become a depository of the active deposits of the moneys of the county.* Up to this point no language is used which would even indicate a legislative intent to prefer institutions having offices in the subdivision or county seat, but note the language that follows, viz:

"*In case there is no such eligible institution,* or in case the aggregate deposits of public moneys of the subdivision applied for by such eligible institution or institutions is less than the aggregate maximum amount to be deposited as such, as estimated by the governing board, the governing board of the subdivision may designate as a public depository or depositories of the active deposits of the public moneys thereof, one or more institutions of the kind mentioned in Section 4 (O. C. Sec. 2296-4) of this act, *which are conveniently located.*" (Italics and parenthesis, the writer's.)

It might be insisted that the subdivision referred to in the latter part of the section does not include a county, but be it remembered that a county is a subdivision of the state.

It is reasonably clear that if a subdivision other than a county has an eligible institution, as provided by the Act, within its territorial limits, such institution has the first right to the active funds of the subdivision, and if there is no such eligible institution within the subdvision other than a county, it is authorized to designate a depository or depositories for its active funds which are conveniently located.

Does the eligible institution within the county seat have a preferential right to the active county funds? The use of the term "subdivision" other than a county in the beginning of the statement of the law would tend to confuse and lead to the conclusion that an eligible institution within the limits of a subdivision other than a county had a preferential right to the active funds of the subdivision, but a doubt would linger as to whether or not an eligible institution in the county seat had a preferential right to the active funds of the county.

This statute does admit of some clarification. I am of the opinion that when the true purpose of this provision is divined, a long step will have been taken toward correct interpretation.

An active account is an absolute necessity under our financial set up. The state, counties and all subdivisions must have such an account, else current operation expenses could not be paid, as a failure of a treasurer to comply with the Uniform Depository Law renders the treasurer liable on his official bond. With this spur behind them, the various treasurers see to it that little cash remains in their coffers. The business of the subdivision is usually transacted within the territorial limits of the subdivision, and the business of a county is usually transacted at the county seat. Such arrangements tend to convenience and efficiency. The warrant of the subdivision is cashed at the subdivision depository, and the warrant of the county is cashed at the county depository. To have subdivision depositories distant from the subdivision and to have county depositories distant from the county seat would engender inconvenience and vexation and detract from efficiency, hence the clause "In case there is no such eligible institution * * * the governing board of the *subdivision* may designate as a public depository or depositories of the active deposits of the public moneys thereof, one or more institutions of the kind mentioned in Section 4 of the act, *which are conveniently located.*" (Italics, the writer's). The words "conveniently located" make it manifest that the General Assembly had the convenience of the

people generally in mind when it enacted the Uniform Depository Act.

The word *subdivision* in the latter part of the provision above quoted does not tend to dispel the fog it raised in the first part thereof, hence it is necessary to go farther to dispel it.

Subdivision is defined in subsection (b) of Section 1 of the Uniform Depository Act as follows:

> "Subdivision means any county, school district, municipal corporation (excepting a municipal corporation or a county which has adopted a charter under the provisions of article XVIII or article 1 of the constitution of Ohio, having special provisions respecting the deposit of the public moneys of such municipal corporation or county), township, special taxing or assessment district or local authority electing or appointing a treasurer in this state."

Applying this definition to a county—in other words, by calling a county, as used in the provision next to the last above referred to—a subdivision, as defined by subsection (b) of Section I of the Act, it can be made workable to the end that an eligible institution in the county seat has a preferential right as a depository, to the active funds of the county, and it is the only hypothesis upon which can be accomplished the evident purpose of the General Assembly, namely, that an eligible institution within the territorial limits of a subdivision other than a county shall have a preferential right to the active funds of the subdivision, and an eligible institution in the county seat shall have a preferential right to the active funds of the county.

Another question suggests itself: Suppose there are a number of eligible institutions in the subdivision or county seat and all of them make application for the active funds of the subdivision or county, as the case may be, how should such active funds be allocated? Section 10 of the Act takes care of this situation, viz.:

> "Such governing board shall award the active deposits of public moneys subject to its control to the institution or institutions in proportion to their capital funds."

Still another question is suggested. Take for example a city, other than a charter city. There are ten or a dozen eligible institutions therein and each and all of them apply for the active funds. Naturally, the pay roll account will consume by far the greater portion of the active funds of the city.

Can the governing board allocate a sufficient amount of the active funds of the city to one institution to take care of the pay roll account, providing always that it can qualify for such an amount, or must it allocate such active funds as provided by Section 10 of the Act? The allocation of sufficient funds to take care of the pay roll account to one eligible institution doubtlessly would conduce to the public convenience and efficient handling of the funds, but no governing board is granted such authority. This problem is one for the legislative branch of government, and until it remedies the situation, Section 10 of the Act will have to be followed.

It will be noted that I excepted charter cities from the hypothetical case above stated. This was done because of the exception contained in Section 1, Subsection (b) of the Act, viz.:

> "Subdivision means any county, school district, municipal corporation (excepting a municipal corporation or a county which has adopted a charter under the provisions of Article XVIII or Article I of the Constitution of Ohio, having special provisions respecting the deposit of the public moneys of such municipal corporation or county,) * *"

This exemption is not absolute, in my opinion, but limited. To the extent that charter cities and charter counties have made proper provision for the deposit of their public funds, the New Uniform Depository Act has no application. To the extent that such charter cities and charter counties have not made proper provision for the deposit of their public funds, said Act is applicable.

Let it be further noted that the word and figure "article 1" is a typographical error. It should be "article 10," as Article I of the Constitution has nothing whatever to do with charter cities or charter counties.

This opinion is enlarged intentionally in the hope that it will suffice for inquiries coming from other sources relative to the New Uniform Depository Act.

Respectfully,
HERBERT S. DUFFY,
Attorney General.