

since it would decrease his salary during his term of office, contrary to the provisions of Section 14, Article IV, of the Constitution of Ohio."

The foregoing case overrules the opinion of this office, No. 69, and I accordingly officially direct your attention to this decision for your guidance in the premises.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

1859.

DEPOSITORY — ALTHOUGH DEPOSITORY CONTRACT AWARDED BIDDING BANK BY COUNTY COMMISSIONERS NO NEW DEPOSITORY CREATED UNTIL BOND OR LAWFUL SECURITIES HAVE BEEN DEPOSITED WITH COMMISSIONERS—SURETIES ON BOND OF COUNTY DEPOSITORY BANK LIABLE WHEN.

*SYLLABUS:*

1. *When a board of county commissioners has advertised in the manner provided in Section 2716, General Code, for depositories, and has made an award of the depository contract to a bidding bank, pursuant to Section 2717, General Code, no new depository is created until a bond has been filed with the board of county commissioners and approved by it, or lawful securities have been so deposited with it for the insurance of the safekeeping and return of moneys deposited in such depository.*

2. *The sureties on the bond of a county depository bank remain liable on their bond given in compliance with Sections 2722 to 2727, General Code, until the funds which have been in the depository have been returned, a new depository created, or a substitute bond has been furnished and accepted by the board of county commissioners, in lieu thereof.*

COLUMBUS, OHIO, November 10, 1933.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your request for my opinion concerning the following matters:

"In 1929 a contract was entered into between the county commissioners of Van Wert County and the Wren Bank of Van Wert County under which the Wren Bank was to act as depository for the funds of Van Wert County, as provided by Sections 2741 et seq. of the General Code. A personal bond was furnished under the contract. This bond was approved by the county commissioners as sufficient, and \$15,000 was placed in said Wren Bank under the agreement, as inactive money.

This contract went into effect in January, 1930.

In 1933 the question of a new contract came up. After the county commissioners had advertised for bids, a proposal was received from

the Wren Bank, and the commissioners agreed to retain this bank as depository. However, before a bond was furnished by the said Wren Bank under the new contract, the bank was closed by the State Banking Department. As a result, the following condition exists: The county commissioners hold the bond that was given in January, 1930, as security for the \$15,000 which now remains in the closed bank.

The present county treasurer was not treasurer at the time the 1929 contract was entered into with the Wren Bank by the county commissioners, nor has he ever received written notice from the county commissioners of the establishment of said Wren Bank as official depository under a new contract.

QUESTION: Is the county treasurer liable on his bond or otherwise, for the \$15,000 in the Wren Bank?"

Your inquiry raises a question as to the interpretation of the sections of the General Code, with reference to the creation and security of county depositories (§§2715 to 2737, G. C.) Inasmuch as the subject matter of your inquiry is with reference to inactive depositories, I am herein discussing that portion of such sections having reference to inactive depositories.

Section 2715, General Code, authorizes the board of county commissioners to designate a bank as depository for the inactive funds of the county treasurer.

Sections 2716, 2717, 2718 and 2719, General Code, provide the procedure to be followed by the county commissioners in establishing such depositories. Such procedure might be summarized as follows:

First, the county commissioners must advertise for offers from banks to act as depositories. (§2716, G. C.)

Second, at noon of that Monday which follows the last publication of the advertisement the county commissioners must open the sealed bids or offers received from banks to act as depository and award the deposit to that offerer which offers to pay the highest rate of interest for the use of funds. (§§2717 to 2719, G. C.)

From the procedure laid down by these sections it is evident that the legislature intended the bid of the bank to be considered as an offer on the part of the bidding bank to become a depository of the inactive funds of the county treasurer upon the terms stipulated in the bid. It is further evident that the legislature did not contemplate that such bid would become a contract until accepted by the board of county commissioners.

It appears to be an established rule of the law of contracts that an offer may be revoked by the offerer at any time before its acceptance, (1 Page on Contracts Section 118 and cases there cited) unless for a valuable consideration the offerer has agreed that the offer could not be revoked (1 Page on Contracts, Section 122 and cases cited; *Longworth vs. Mitchell*, 26 O. S. 334; *Wallace vs. Townsend*, 43 O. S. 537.

It is also an established rule with reference to the law of contracts that an offer, until it is accepted, creates no obligation on the offerer other than to keep himself ready to perform the proffered act or services in the event that and when the offer may be accepted. (1 Page on Contracts, Section 74; *Wald's Pollock on Contracts*, Sections 5 and 6.

It further seems to be established that an adjudication of insolvency of the offerer, if a corporation, before acceptance, revokes the offer and that it can not thereafter be accepted. Such act terminates the existence of the offerer, if a corporation, in the same manner as would death, if the offerer were an individual.

It is thus evident that a board of county commissioners could not enter into a contract with a bank taken over by the superintendent of banks for liquidation before its offer had been accepted. The manner of acceptance by the board of county commissioners is specified by statute, that is, by award, or an acceptance of the bid or offer upon condition that security be furnished for the safekeeping and return of the deposits. The acceptance is not complete until legal security has been delivered to the board of county commissioners and approved by them. Sections 2722 and 2727, General Code, specifically provide that such award shall not be binding until such time. Such section 2722 reads:

“No award shall be binding on the county nor shall money of the county be deposited thereunder until the hypothecation of the securities hereinafter provided, or until there is executed by the bank or banks or trust companies so selected and accepted a good and sufficient undertaking, payable to the county, in such sum as the commissioners direct, but not less than the sum that shall be deposited in such depository or depositories at any one time.”

I am therefore of the opinion that no new depository was created by the acts of the commissioners of Van Wert County as such acts are stated in your inquiry.

Your second inquiry is as to whether the sureties on the bond of the depository which was entered into at the time of the creation of the depository bank now in liquidation are liable for any loss occasioned by reason of the insolvency of such bank. It is elemental that the sureties of a bond can not be held accountable for loss otherwise than as specified in the bond. In other words, the extent of the liability of the sureties must be gathered from the terms of the bond. *Bank vs. Houtzer*, 96 O. S. 404; *Olmstead vs. Albers*, 26 O. C. C. (N. S.) 479. Yet it is also an established rule that when a statutory bond is given, the statutes under which it is given are as much a part of the bond as though they were transcribed verbatim into the body of the bond. *Commissioners vs. Ins. Co.*, 30 O. N. P. (N. S.) 163.

Section 2727, General Code, provides that the bond shall be conditioned for the “safe keeping and payment over of all money with interest thereon at the rate specified in the proposal, which may come under its (the depository’s) custody.” (See also Section 2726, General Code.)

Section 2724, General Code reads:

“Such undertaking shall be continuous in form and, except as hereinafter provided, shall remain in full force as to any and all deposits secured by it until the same have been withdrawn in total, including all interest thereon, provided, that in case the deposits shall be increased or decreased the depository may furnish and substitute for said undertaking a good and sufficient new undertaking not less than the sum then on deposit or in an amount which together with securities duly and legally hypothecated shall be not less than the sum so on deposit; and any depository which has furnished more than one undertaking for any deposit may, upon such deposit being reduced, obtain the release and surrender of any undertaking as herein provided if there remain in force to secure said deposit an undertaking or undertakings, and securities, or either, not less than the sum then on deposit. The county commissioners by resolution spread on their journal may release any undertaking and

surrender the same to the depository upon the withdrawal in total of any deposit, or upon the reduction of any deposit and upon the furnishing and acceptance of any new undertaking or securities substituted therefor, as herein provided."

Section 2725, General Code, provides the manner by which such bond may be cancelled. Such section reads:

"Such undertaking may be cancelled by ten days' written notice to the county commissioners, the county auditor and the county treasurer, each separately, given by a surety thereunder to withdraw the money of the county in such depository. If the money of the county so deposited is paid by such depository to the county treasurer on his demand within ten days, or if it furnishes and substitutes new and satisfactory undertakings or securities, as provided herein, such surety shall be released from his obligation, but not before. No cancellation shall operate to relieve any surety of liability for deposits made before such notice was given, until such deposits are secured to the satisfaction of the county commissioners as evidenced by resolution spread on their journal or until such deposits are returned to the county treasurer. No such cancellation shall be accepted until satisfactory undertakings or securities as herein provided shall be substituted therefor."

From a perusal of such sections it is evident that the sureties on such bond remain liable until a new bond is given or until the funds are removed from the depository bank.

In view of my opinion as herein expressed as to the legality of the deposit in question, and of the provisions of Section 2741, General Code, that a county treasurer shall not be personally liable for loss occasioned by the default of a depository when such depository is created pursuant to the chapter of the General Code with reference to county depositories, it necessarily follows that my answer to your inquiry is in the negative.

Specifically answering your inquiry it is my opinion that:

(1) When a board of county commissioners has advertised in the manner provided in Section 2716, General Code, for depositories, and has made an award of the depository contract to a bidding bank, pursuant to Section 2717, General Code, no new depository is created until a bond has been filed with the board of county commissioners and approved by it or lawful securities have been so deposited with it for the insurance of the safekeeping and return of moneys deposited in such depository.

(2) The sureties on the bond of a county depository bank remain liable on their bond given in compliance with Sections 2722 to 2727, General Code, until the funds which have been in the depository have been returned, a new depository created, or a substitute bond has been furnished and accepted by the board of county commissioners in lieu thereof.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*