

township trustees the authority to make such expenditures for the purposes therein mentioned. In the exercising of such power, said trustees are under the supervision and direction of the county surveyor. However, the section expressly authorized such trustees, in their discretion, to pass a resolution permitting the county commissioners to expend said township's share of said funds for roads which they designate in their township. It follows that unless and until the township trustees relinquish their right to the county commissioners, the expenditure of said fund is a matter which is under the control of such trustees, so long as they expend it in accordance with the provisions of the act and for the purposes specified therein.

Based upon the foregoing and in specific answer to your inquiries, it is my opinion that:

First, it is the primary duty of the county commissioners to construct bridges and culverts in the improvement of township roads. However, the township trustees may undertake the construction of such bridges if they so desire.

Second, the discretion to determine the nature of the improvement and the part of the county system to be improved from funds which are the proceeds of the township's share of the two cent gasoline tax, as provided in House Bill No. 335 (Sullivan-Bostwick Act), is in the township trustees, unless such trustees see fit to relinquish this privilege to the county commissioners.

It is believed the foregoing makes it unnecessary to specifically answer the second and third branches of your second inquiry.

Respectfully,
GILBERT BETTMAN,
Attorney General.

477.

SURETIES—GUARANTEEING DEPOSITS OF TOWNSHIP TRUSTEES
AND SCHOOL BOARD—CANNOT BE RELEASED UPON BANK'S
FAILURE—SECTIONS 2303, ET SEQ., GENERAL CODE, INAP-
PLICABLE.

SYLLABUS:

The authority to release a treasurer of a county, city, village, township or school district for a loss of public funds entrusted to him and resulting from fire, robbery, burglary or inability of a bank to refund public money of the subdivision lawfully in its possession, and which loss is not occasioned by the fault or negligence of the said treasurer, by virtue of Section 2303, et seq., of the General Code, does not extend to the releasing of sureties on depositary contracts.

COLUMBUS, OHIO, June 4, 1929.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR:—By your recent communication my opinion is requested with reference to the following statement of facts:

“The board of education of Washington Township centralized school district and the trustees of Washington Township have deposited public funds in the Arcadia Bank and Savings Company which has been closed for some time and is now in the hands of a liquidating officer.

At the time the bank closed the trustees had a balance of \$10,004.00 to its credit and the school board had approximately \$24,000.00 on deposit. At the time these funds were deposited in this bank, the bank gave the township trustees and the school board each a security bond in the sum of twenty-five thousand dollars (\$25,000.00). These bonds were executed by the bank as principal and a number of the leading citizens of that community signed these as sureties. This bank was designated as depository by a resolution of both the school board and township trustees, and acted as treasurer for both organizations.

Under Section 2303 of the Ohio General Code the Legislature has made it possible for the county commissioners and others to release and discharge a treasurer and sureties upon their official bonds for loss arising, due to the inability of a bank to refund public money lawfully in its possession belonging to public funds. The question of law which I wish to submit to you under these facts is whether or not the sureties on these bonds may be released."

By the terms of Sections 2303, et seq., General Code, provision is made for the release, under certain circumstances, of a treasurer of a county, city, village, township or school district for losses of public funds entrusted to him, which losses were not occasioned by his fault or negligence.

Section 2303, General Code, provides that when public funds entrusted to the treasurer of a county, city, village, township or school district, by virtue of his office, are lost as a result of fire, robbery, burglary or inability of a bank to refund public money lawfully in its possession and belonging to such political subdivision, the county commissioners, township trustees, city or village council or board of education, as the case may be, may release and discharge such treasurer and his sureties from all liability on account of such loss.

Section 2304, General Code, provides that before any such release or discharge shall be effected, a finding shall be made by the proper authorities and entered upon their records to the effect that such loss was not occasioned by the fault or negligence of the treasurer.

Were it not for the specific authority above referred to, a treasurer of a county, city, village or board of education and his sureties would be liable for losses such as the statute authorizes him to be released from. The provision authorizing the release is in derogation of common law principles and should be strictly construed. It mentions only a treasurer of certain political subdivisions, and not the sureties for public depositories. When a depository is provided for township and school district moneys, and the moneys properly secured, the treasurer of the school district and the township trustees are relieved of any liability occasioned by the failure of the bank, and the depository security is looked to for relief. See Sections 7709 and 3326, General Code.

I can conceive of no rule of construction or of any principle of law that would permit the extension of the provisions of these statutes to release the sureties on a depository contract any more than it would authorize the release of any other obligation inuring to the benefit of the political subdivision.

I am therefore of the opinion that neither a board of education nor a board of township trustees, by virtue of Sections 2303, et seq., of the General Code, nor by virtue of any other provisions of law, is authorized to release the sureties on a depository contract under circumstances such as are set out in your inquiry.

The practice of accepting personal sureties as security on depository contracts is not looked on with favor for the very reason that in case of loss the burden too often falls on innocent parties who can ill afford to sustain the loss, and who often-

times are residents of the political subdivision whose funds are secured, and friendly with the authorities who must necessarily enforce the contract. That fact, however, if such surety is taken, does not change the law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

478.

HOUSE BILL NO. 377—APPROPRIATION TO PAY EXPENSES OF SPECIAL COMMISSION ABROAD— SUBJECT TO REFERENDUM.

SYLLABUS:

House Bill No. 377, passed by the 88th General Assembly, and the appropriation therein made are subject to referendum, and the same will not go into effect until ninety days from April 25, 1929, to-wit, July 24, 1929.

COLUMBUS, OHIO, June 4, 1929.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of the recent communication from your office over the signature of Wade C. Christy, Assistant Adjutant General, requesting my opinion on the question as to whether House Bill No. 377, enacted by the recent General Assembly, is subject to the referendum, or whether, on the other hand, said act and the appropriation therein provided for are now in effect. The act here in question, which was passed by the 88th General Assembly, approved by the Governor April 19, 1929, and filed in the office of the Secretary of State, April 25, 1929, provides as follows:

“Section 1. The governor of the state, the adjutant general, and ten members of the 88th general assembly of Ohio, to be appointed by the governor, and all of whom shall be veterans of the world war, preference to be given to those members who are veterans of the 37th Division of the American Expeditionary Forces, are hereby constituted a commission to attend and officially represent the state of Ohio at the dedicatory ceremonies of the Ohio battle monuments which have been erected, by the authority of the state of Ohio, at the village of Eyne in Belgium and the villages of Montfaucon and Hattonchatel in France. A band to be selected by the 37th Division, A. E. F. Veterans' Association from former bandsmen of the 37th Division is hereby authorized to accompany said commission.

Section 2. All actual and necessary expenses of the members of said commission and the cost of transportation and uniforms of the band shall be paid out of the state treasury on the warrant of the auditor of state, upon the presentation of vouchers signed by the adjutant general.

Section 3. There is hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated the sum of thirty thousand dollars for the uses and purposes of this act.”

The functions of the state government in the expenditure of public funds, pursuant to appropriations made by the Legislature, extend not only to expenditures