

Unless a bank furnishes proper security for deposits of public funds under the several depository laws of this state relating to the deposit of public funds of the state, counties, municipalities, school districts and townships, lawful contracts for the deposit of these funds can not be made with it, and a bank receiving such deposits with knowledge of the nature thereof, which does not furnish security as provided by the statutes of Ohio, will be held to account in full for the deposits so received, together with all profits accruing therefrom."

In the course of the opinion, it is said:

"Without any doubt whatever, it is the prerogative of the legislature to fix the manner and extent of depositing school funds in banks, and to fix the security for such deposits that may be accepted by the depositor and that must be furnished by the depository bank upon receiving and accepting the deposit. Having done so, it is not within the power of a board of education or its treasurer to make such deposits in a manner otherwise than that fixed by the legislature or to accept as security for such deposits any guarantee or other security than that fixed by the legislature. Any deposits not made in the manner prescribed by law, or secured otherwise than as the statutes prescribe, would be an irregular or unauthorized deposit and under the decisions of our Supreme Court, a bank receiving such an unauthorized deposit of public funds, knowing them to be public funds, will be held to account for the full amount of the deposit and the profits arising from it." (See *Bank vs. Newark*, 96 O. S., 453.)

In specific answer to your questions, I am of the opinion:

1. In a school district containing less than two banks it is not necessary for the board of education, when selecting a depository for the public funds of the district, to advertise and receive competitive bids therefor. After adopting a proper resolution, as provided by Section 7607, General Code, the board of education may enter into a depository contract with one or more banks that are conveniently located that offer the highest rate of interest for the full time the funds or any part thereof are on deposit.

2. A board of education may lawfully enter into a contract with a bank or banks for the deposit of the funds of the district even though such bank or banks offer to pay no more than one-tenth of one per cent interest.

3. A school depository bank must furnish such security for deposits made in such bank as the statutes of Ohio prescribe, for the full amount of such deposits. No part of said deposit may lawfully be secured by the federal guarantee or insurance provided for deposits by the Banking Act of 1933.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2364.

EMBALMERS—LICENSE ISSUED UNDER SECTION 1343 G. C. MUST BE RENEWED IN 1934 UNDER PROVISIONS OF EMBALMERS' AND FUNERAL DIRECTORS' LAW.

SYLLABUS:

*The holder of an embalmer's license issued under authority of section 1343,*

*General Code, which section has been repealed by Amended Senate Bill No. 99, must renew his license for the year 1934 in accordance with the provisions of the new Embalmers' and Funeral Directors' law.*

COLUMBUS, OHIO, March 13, 1934.

*Board of Embalmers and Funeral Directors, Cleveland, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“As Secretary-Treasurer of the Board I have been instructed to write you for a quick opinion on Section 1335-6 of the General Code of Ohio, which section pertains to the renewal of Ohio embalmer's license. Section 1335-6, G. C., paragraph 5, states as follows:

‘Any person now holding a license granted by any authority of this state to carry on the profession of embalming shall not be required to make a new application, or submit to an examination, but shall be entitled to a renewal of his license upon the same terms and conditions as are herein provided for the renewal of licenses of those who may be licensed after the passage of this act, but all such persons shall be subject to every other provision of this act and such rules and regulations as the board may adopt in pursuance of this act.’

We want to know if the above portion of Section 1335-6, G. C., has repealed the embalmer's license renewal granted under the old embalming law which was repealed by the present law. In other words inform us if renewal cards, issued under the old law, are still in effect. Under the old law renewal of license was granted for a five year period, to expire on December 31st, 1934.

Also inform us if all Ohio licensed embalmers should, according to law, be required to renew for the year 1934 in accord with rules and regulations adopted by the Board.”

Section 1343, General Code, before its repeal, read in part as follows:

“\* \* \* Every five years beginning the first day of January, 1926, every license holder shall pay to the secretary-treasurer of the State Board of embalming examiners the fee of one dollar for the renewal of his or her license for the incoming five years, whereupon the secretary-treasurer shall issue a renewal card acknowledging the receipt of the fee therefor; in case an applicant fails to pay such fee on or before January 1st, but not later than six months thereafter the board may without examination issue to him such renewal card for the remainder of the calendar year but only upon payment of a fee of ten dollars. Each license renewal card shall be registered in like manner as the license originally issued.”

In your letter you state that under the old law a renewal of a license was granted for a five-year period to expire on December 31, 1934. There is no doubt that from a reading of the above statute, and from common knowledge,

that you mean December 31, 1935. In other words, under the old embalmers' law an embalmer's license would not expire until December 31, 1935. In the meantime, the legislature has enacted Amended Senate Bill No. 99 (115 O. L. 347), which retains the classification of embalmers and also creates the separate classification of funeral director. The same person may be both an embalmer and funeral director, or may be either one or the other. The title of Amended Senate Bill No. 99 reads as follows:

"To create the board of embalmers and funeral directors of Ohio and to provide for its powers and duties and to repeal sections 1335, 1336, 1338, 1339, 1340, 1341, 1342, 1343, 1343a, 1343-1, 1343-2, 1343-3, 1343-4, 1345, 1346, 1347 and 1348 of the General Code."

Section 1343, General Code, has therefore been specifically repealed by the new law, and an examination of Amended Senate Bill No. 99 discloses that the legislature has specifically covered the question presented in your letter. The pertinent provisions of section 1335-6, General Code, have been quoted in your letter, *supra*.

The renewal of licenses for those who may be licensed after the passage of this Act is covered by section 1335-3, General Code, which reads in part as follows:

"\* \* \* the board shall further determine and fix the fees, not to exceed a total aggregate sum of ten dollars to be charged each applicant for the application, registration, examination and issuance of, *and not to exceed the sum of five dollars per each renewal of licenses of persons desiring to engage in the profession or business of embalming and/or further funeral directing.* \* \* \*

Reading sections 1335-3 and 1335-6 together it is obvious that the legislature has in very clear language declared that persons already holding a license as an embalmer must renew that license for the year 1934 and pay the sum of five dollars (\$5.00). In other words, renewal licenses issued under the old law are no longer in effect since the enactment of the new Embalmers' and Funeral Directors' Act.

As to the wisdom of the legislature repealing a law under which a person holds a license that will not lapse for several years, I express no opinion since that is a question for the legislature. I may say that the constitutionality of that part of section 1335-6, relative to the renewal of embalmers' licenses, has been questioned. With respect to this point, I might say that it has been the long established policy of this office to render no opinion as to the constitutionality of an act which has been passed by the General Assembly. The power to pass upon the constitutionality of a law enacted by the legislative branch of the government, or to declare the acts of such body to be violative of the provisions of the constitution, is probably the highest function of the judicial branch of the government. Such power is not vested in the Attorney General as an administrative officer.

Without further extending this discussion, and in answer to your two questions which are closely related, it is my opinion that the holder of an embalmer's license issued under authority of section 1343, General Code, which section has

been repealed by Amended Senate Bill No. 99, must renew his license for the year 1934 in accordance with the provisions of the new Embalmers' and Funeral Directors' law.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2365.

BLIND PERSON—MAY HOLD OFFICE OF TOWNSHIP CLERK AND RETAIN BLIND PENSION IF CONSIDERED "NEEDY BLIND" BY COUNTY COMMISSIONERS.

*SYLLABUS:*

1. *Blindness does not disqualify a person from holding the office of township clerk.*

2. *A blind township clerk may retain his blind pension allowed him by the county commissioners if such commissioners determine that the amount of his fees and allowances for his services as township clerk are not sufficient to provide him with the necessities of life, that he has no other sufficient means of his own to maintain himself, and that, unless extended the relief authorized by law, he would become a charge upon the public or upon those not required by law to support him.*

COLUMBUS, OHIO, March 13, 1934.

HON. FANNIE M. MYERS, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR MADAM:—Your recent communication reads as follows:

"We have a situation in our county pertaining to a blind person holding the office of Township Clerk, and may we ask for an opinion from you covering the following questions:

1st: Is there any statute prohibiting a blind person from holding the office of Township Clerk?

2nd: Can such blind Clerk retain his pension, allowed him by the Blind Relief Commission?"

Relative to your first question, I may say that a careful examination of the General Code of Ohio does not reveal any statute expressly prohibiting a blind person from holding the office of township clerk. Although you do not specifically so ask, I presume you desire to know whether or not a blind person may hold the office of township clerk. There is no doubt that the legislature has the power to prescribe the qualifications for an office, providing such qualifications are not in conflict with any qualifications required of a particular office by the Constitution. This seems clear from the Supreme Court case of *The State of Ohio, on relation of the Attorney General, vs. Samuel F. Covington et al.*, 29 O. S. 102. The ninth paragraph of the syllabus of such case reads: