

lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1383.

APPROVAL, BONDS OF SHAKER HEIGHTS CITY SCHOOL DISTRICT,
 CUYAHOGA COUNTY, OHIO—\$175,000.00.

COLUMBUS, OHIO, August 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1384.

DEPOSITORY—NOT REQUIRED TO PAY INTEREST ON DEPOSITS OF
 MUNICIPAL UNIVERSITY WHEN—FEDERAL RESERVE BANK
 MAY NOT PAY INTEREST ON SUCH DEPOSITS WHEN—WHEN
 INTEREST PAYABLE UPON MUNICIPAL DEPOSITS.

SYLLABUS:

1. *The board of directors of a municipal university, under a resolution adopted by virtue of section 7909 of the General Code, having assumed control and custody of all university funds, the State law does not require the payment of interest upon a deposit of such funds in a bank, and under section 11 (b) of the Banking Act of 1933 (Glass-Steagall Act) a member bank of the Federal Reserve System cannot pay interest upon such deposit.*

2. *Where payment of interest is required under a depository contract entered into by a municipal corporation pursuant to an ordinance of council, in conformity with the municipal depository statutes (sections 4295, 4296), the payment of interest is required under State law within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.*

3. *The fact that section 4295 of the General Code does not prescribe a minimum rate of interest which a depository bank must pay upon municipal deposits, does not prevent that section from being a State law requiring the payment of interest within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.*

COLUMBUS, OHIO, August 11, 1933.

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

GENTLEMEN:—You have requested my opinion on the following questions:

"QUESTION NO. 1. The depository of the University of Akron has been placed in liquidation, and the University has been compelled to acquire a new depository, has advertised and received bids, as provided by law, the Trustees of the University having some time ago adopted a resolution as provided by law to assume the control and custody of the funds of the University of Akron.

The only bid received was from a bank which is a member of the Federal Reserve System. One of the provisions of the new Banking Act of 1933, known as the Glass-Steagall Act, approved on June 16, 1933 by the President, provides in part as follows:

'No member bank shall, directly or indirectly by any device whatsoever, pay any interest on any deposit which is payable on demand: PROVIDED, That nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract heretofore entered into in good faith which is in force on the date of the enactment of this paragraph; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this paragraph, and every member bank shall take such action as may be necessary to conform to this paragraph as soon as possible consistently with its contractual obligations: PROVIDED, however, That this paragraph shall not apply to any deposit of such bank which is payable only at an office thereof located in a foreign country and shall not apply to any deposit made by a mutual savings bank, nor to any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, with respect to which payment of interest is required under State law.'

No contract has been entered into with the bank which made the bid as the depository for the University funds.

The question has been raised as to whether said bank, being a member bank of the Federal Reserve System, may pay interest on the funds of the University of Akron, in view of the provisions of the New Federal Banking Act of 1933, and in view of the fact that there is no state law which requires the payment of interest to the Trustees of a University for moneys of which they have assumed the control and custody by resolution.

QUESTION NO. 2. The City of Akron, which is a charter city, has deposited its funds in depositories under and by virtue of certain ordinances duly adopted, which require the bank to pay not less than 2% upon funds so deposited.

In view of the provision of the Federal Banking Act of 1933 mentioned in the first question, the question arises as to whether a member bank of the Federal Reserve System may pay interest on a depository contract entered into under and by virtue of certain ordinances duly adopted by the Council of the charter city, or whether it will be necessary, before interest may be paid by such a bank, that said ordinances be repealed and the depository contract be awarded under the provisions of the state law.

QUESTION NO. 3. The state law with reference to certain subdivisions provides that a certain rate of interest must be paid, but no such provision is contained in the state laws with reference to funds of municipalities.

In view of the state law which does not require that a minimum interest rate be paid to municipalities for funds placed with depositaries, may a municipality, under the new Federal Reserve Banking Act, receive interest from a member bank of the Federal Reserve System because of the fact that no minimum interest rate is required?"

In your communication you have quoted that part of section 11 (b) of the Banking Act of 1933 which is pertinent to your inquiries. In regard to your first question, it is apparent that interest is payable only if the contemplated deposit of funds of the University of Akron comes within the proviso excepting any deposit of public funds "with respect to which payment of interest is required under State law."

Under section 7905 of the General Code a municipal university is a university supported in whole or in part by municipal taxation. You state in your letter that some time ago the "trustees" of the University of Akron adopted a resolution to assume control and custody of the funds of the university. I find no provision in the statute which uses the term "trustees" in relation to the governing board of a municipal university. Sections 4001 to 4003 inclusive provide for a board of directors and prescribe its powers and duties. I assume that proper action has been taken in order to take advantage of the provisions of section 7909, which also refers to the board of directors. That section provides *inter alia*:

"* * * The funds of any such university, college or institution shall be paid out by the treasurer upon the order of the board of directors and the warrant of the auditor; provided, however, that the board of directors of any such municipal university, college or institution may assume control and custody of such funds, by adopting a resolution to that effect, whereupon said funds upon receipt of the same by the treasurer of the municipal corporation shall be paid over by him to said board of directors upon the warrant of the auditor, *and thereafter the possession and disbursement of said funds shall be subject to the order of said board.*" (Italics the writer's.)

In a former opinion of this office, reported in Opinions of the Attorney General for 1928, volume 1, page 164, it was held that the board of directors of a municipal university by the adoption of a resolution for that purpose might require funds from the issue and sale of bonds for university building construction, improvement or equipment purposes to be paid over to such board. In the course of the opinion the then Attorney General said at page 165:

"With respect to the question submitted, Section 7909, General Code, provides that the board of directors of any municipal university, college or institution may, by the adoption of a resolution to that effect, assume control and custody of the funds of such university, college or institution, and thereafter the possession and disbursement of said funds shall be subject to the order of said board of directors. There is nothing in the provisions of this section which in any way limits the funds thus subject to the control of the board of directors of such municipal university or college to those of any particular source or kind * * *."

It thus appears that by virtue of section 7909, the board of directors may assume entire control and custody of all of the university funds upon the adop-

tion of a resolution to that effect. When this action has been taken it becomes mandatory for the treasurer of the municipality to pay over all such funds as he receives them to the board of directors upon the warrant of the auditor "and thereafter the possession and disbursement of said funds shall be subject to the order of said board."

Section 4295, General Code, requiring the payment of interest upon deposits of funds of municipalities, reads in part:

"The council may provide by ordinance for the deposit of all public moneys *coming into the hands of the treasurer*, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, or furnish good and sufficient surety, or secure said moneys by a deposit of bonds * * * ." (Italics the writer's.)

Obviously, this section does not require the payment of interest upon funds exclusively under the control of the board of directors of a municipal university. Such funds are not in the hands of the municipal treasurer and the council is without authority to exercise control over them by the adoption of a depository ordinance or otherwise. Since I know of no state law requiring the payment of interest upon the funds of the University of Akron in question, it follows that in my opinion the Banking Act of 1933 prohibits a member bank of the Federal Reserve System from paying interest upon the deposit of such funds.

Your second question is whether a member bank of the Federal Reserve System may pay interest upon a depository contract made by virtue of certain ordinances of a charter city, or whether in order for the bank to pay interest, the depository contract must have been established by complying with the State law providing for depositories of municipalities (sections 4295, 4296 G. C.).

It is clear that under the Federal Act interest is payable if "required under State law." It appears from your communication that in theory depository ordinances were enacted by the city council in the exercise of the municipal corporation's powers of local self-government. Yet it does not appear from your inquiry that there was in any respect a failure to comply with the various requirements of the applicable state depository statute. Council adopted an ordinance which is the method of providing for the deposit of public moneys prescribed by section 4295. The fact that the ordinance required payment of 2% interest does not contravene any provision of the municipal depository statute. In an opinion of this office, reported in Opinions of the Attorney General for 1928, volume 3, page 2161, it was held that "council may provide in advertising for bids for public depositories that a bid offering a rate of interest of less than 2% will not be accepted."

The ordinance in question may have provided for competitive bidding and the giving of security as provided by section 4295. For all that appears, the ordinance and proceedings met the requirements of section 4296, which provides:

"In such ordinance the council may determine the method by which such bids shall be received, the authority which shall receive them, and which shall determine the sufficiency of the security offered, the time for the contracts for which deposits of public money may be made, and all details for carrying into effect the authority here given. Proceedings in connection with such competitive bidding and the deposit of

money shall be conducted in such manner as to insure full publicity, and shall be open at all times to the inspection of any citizen. As to any deposits made under authority of an ordinance of the council, pursuant hereof, if the treasurer has exercised due care, neither he nor his bondsmen shall be liable for any loss occasioned thereby."

The following language appears in the 1928 opinion last referred to at page 2163:

"Section 4295, General Code, limits council in the selection of banks for depositories to a bank or banks in the municipality or county; although, by the terms of Section 4296, General Code, council is authorized to determine the method by which bids shall be received, the authority which shall receive them and determine the sufficiency of the security offered, the time for the contracts for which deposits may be made, and all the details for carrying into effect the authority to provide depositories, except those pertaining to the security of deposits and the publicity of the bidding therefor."

The depository contract apparently having been entered into in the manner prescribed by State law, it becomes necessary to determine whether or not the State law with respect to the deposit of municipal funds requires the payment of interest.

Your third question is whether the municipal depository statute is a State law requiring the payment of interest within the proviso contained in section 11 (b) of the Banking Act of 1933 in view of the fact that no minimum rate of interest is required by section 4295 of the General Code. It is true that certain other depository statutes stipulate a minimum rate of interest which must be paid to the public depositor. Thus, section 330-3, General Code, requires interest upon daily balances of not less than 3% per annum for inactive deposits of State funds and not less than 2% per annum for active deposits. Similarly, section 2716 requires not less than 2% on inactive and 1% on active deposits of county funds, while section 3322 provides that in no case shall less than 2% be paid for the full time that township funds are on deposit.

In answering your first and second questions, you will note that I have assumed the distinction between the statutes prescribing a minimum rate of interest to be paid and the municipal depository statute providing for the deposit in the bank which offers the highest rate of interest, to be immaterial. In my opinion that is correct. The proviso in section 11 (b) of the Banking Act of 1933 excepts all public deposits "with respect to which payment of interest is required under State law." No mention is made of how much interest must be required under State law. The requirement in section 4295 that the contract shall be awarded to the bank offering the highest rate of interest and giving sufficient security presupposes that the banks bidding for the deposit offer to pay interest in some amount.

In the light of the foregoing and in specific answer to your inquiries, it is my opinion that:

1. The board of directors of a municipal university, under a resolution adopted by virtue of section 7909 of the General Code, having assumed control and custody of all university funds, the State law does not require the payment of interest upon a deposit of such funds in a bank, and under section 11 (b) of

the Banking Act of 1933 (Glass-Steagall Act), a member bank of the Federal Reserve System cannot pay interest upon such deposit.

2. Where payment of interest is required under a depository contract entered into by a municipal corporation pursuant to an ordinance of council, in conformity with the municipal depository statutes (sections 4295, 4296), the payment of interest is required under State law within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.

3. The fact that section 4295 of the General Code does not prescribe a minimum rate of interest which a depository bank must pay upon municipal deposits, does not prevent that section from being a State law requiring the payment of interest within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1385.

GASOLINE TAX—TOWNSHIP TRUSTEES AUTHORIZED TO USE FUNDS FOR CONSTRUCTION OF ABUTMENTS FOR BRIDGE UPON PUBLIC HIGHWAY.

SYLLABUS:

Township trustees may legally expend gasoline tax funds for the construction of abutments for a bridge upon a public road or highway within the township.

COLUMBUS, OHIO, August 11, 1933.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This acknowledges receipt of your request for my opinion, which reads as follows:

“The Trustees of Newport Township, in Washington County, propose to spend between \$200.00 and \$300.00 of Gasoline Tax Funds to build abutments for a bridge in said Township, the County Commissioners agreeing to build the superstructure.

I have advised the Trustees as to the legality of this expenditure and the project is being held up pending your opinion in the matter.

Please advise me whether or not Gasoline Tax Funds in the hands of the Trustees can be legally expended for this purpose. I will appreciate your opinion at an early date.”

The primary duty of building bridges on county or township roads rests with the county commissioners. Section 2421, General Code, reads in part as follows:

“The commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in