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LIQUIDATION OF STATE BANK—AUTHORITY OF SUPERINTENDENT OF BANKS AS TO DISPOSITION OF SCHOOL FUNDS IN BANK.

SYLLABUS:

1. *In the liquidation of a state bank the superintendent of banks is entitled to charge off against the deposit of a school district the amount of any legal and valid obligation of such school district which is due to said bank.*
2. *The fact that the proceeds of the obligation of the board were placed in the building fund and on the books of the board that fund is not credited with a sufficient amount to pay such obligation, does not alter the above rule.*

COLUMBUS, OHIO, April 5, 1927.

HON. ROY N. MERRYMAN, *Prosecuting Attorney, Steubenville, Ohio.*

DEAR SIR:

Attention J. C. Bigger, Assistant.

I acknowledge receipt of your letter of recent date, which is as follows:

"The State Bank of Amsterdam, Jefferson county, Ohio, was the depository for the Board of Education of Amsterdam village school district. The bank was closed on January 10, 1927, by the State Banking Department, and the assets are now in process of liquidation. At the time the bank was taken over by the state authorities the Board of Education had on deposit \$4,995.81 in one account. Prior to the taking over of the bank the board had been depositing in this account, the General Fund, Teacher's Retirement Fund, Bond and Interest Fund and Building Fund, but on said date, January 10th, the board had checked out of this account all funds except \$7.58 for the Building Fund, \$89.66 for the Teacher's Retirement Fund and \$4,898.57 for the Bond and Interest Fund, making a total, as above stated, of \$4,995.81.

On October 19, 1923, the board executed to the bank its note for \$3,000 to pay for a portable building. What, if any, authority the board had for giving this note, I do not know. There is still a balance due on said note of \$1,000, and interest of \$17.50. The proceeds of this note were applied or credited to the Building Fund.

The state officers in charge of the bank are insisting that the \$1,017.50 due on this note should be deducted from the \$4,995.81, or, in other words, the Bond and Interest Fund, shall be used to pay the balance on the note that was used in the Building Fund.

Can the state officials legally so do?"

The provisions of law governing the deposit of school funds are found in Sections 7604, et seq., of the General Code. It is not necessary to quote the provisions of these sections herein, but I deem it sufficient to call your attention to the fact that no where is there any thing which indicates that the various funds belonging to any school district shall be segregated in making deposits with the depositaries designated under these sections. In other words, the funds are to be treated, in so far as the depository is concerned, as a unit. Furthermore, it is fundamental that the relationship created between the bank and the school district is that of debtor and creditor and that, by virtue of the deposit, the bank merely owes to the school district the sum of money on deposit.

The fact that on the books of the school district certain portions of the moneys on deposit are credited to certain funds does not make the bank the debtor of each individual fund. Its obligation is to the school district alone and the matter of the segregation of the fund is immaterial in so far as it is concerned.

From your statement it appears that the board had executed a note to the bank for \$3,000 to pay for a portable building and that there still remains due thereon a balance of \$1,000, with interest of \$17.50. I note that you state you do not know what authority, if any, the board had for giving this note. Assuming, without passing upon, the validity of this obligation, I am of the opinion that the superintendent of banks, in charge of the liquidation of this bank, may properly set off the amount of this note against the claim of the board for the amount of the deposit. I am further of the opinion that the fact that the building fund on the books of the board only shows a balance of \$7.58 cannot operate to defeat the right of the superintendent of banks to make such offset. The note is a general obligation of the board for which the faith and credit of the school district is pledged and if the amount thereon is now due, the superintendent of banks is clearly entitled to credit it against the claim for the deposit.

I might further suggest that, since the board has evidently secured all the money on the note and used it, there would be considerable difficulty in now resisting the claim of the bank thereon on the ground of illegality.

Answering your question specifically, I am of the opinion that the state superintendent of banks, in charge of the State Bank of Amsterdam, may properly charge off against the deposit of the board of education of Amsterdam Village School District the amount of any legal and valid obligation of the board to said bank.

Respectfully,

EDWARD C. TURNER,
Attorney General.

278.

GRADE CROSSING ELIMINATION—APPLICATION OF FISHER ACT.

SYLLABUS:

1. *Where all through traffic upon an inter-county highway or main market road within a municipality is already carried over certain railroad tracks by means of a viaduct, the provisions of Sections 6956-22, et seq., of the General Code (commonly known as the Fisher Act) are not applicable to the separation of the crossing at grade of such railroad tracks and the public way still existing under such viaduct, but now used solely for purely local traffic.*

2. *Whether or not a proposed grade elimination or separation is necessary and expedient under sections 6956-22, et seq., General Code is a question of fact in each individual case.*

COLUMBUS, OHIO, April 5, 1927.

HON. CHARLES P. TAFT, 2nd, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date, which reads as follows:

“In connection with the rebuilding of the Eighth street viaduct, in the city of Cincinnati, county of Hamilton, state aid has at one time been allowed; and a further application for such aid is now pending before the Director of Highways.