

3176.

COUNTY COMMISSIONERS—AUTHORITY TO COMPROMISE CLAIMS DUE COUNTY FOR MONEYS IN COUNTY DEPOSITORY WHICH IS IN COURSE OF LIQUIDATION.

SYLLABUS:

Under proper circumstances, county commissioners have authority under section 2416 of the General Code to enter into a compromise of claims due the county for money deposited in a county depository, which depository is in course of liquidation.

COLUMBUS, OHIO, April 23, 1931.

HON. JONATHAN H. HARE, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Recently one of the local banks which was an active county depository was taken over for liquidation by the Superintendent of Banks. Its condition was not one of insolvency but its closing was due to the existence of a large amount of frozen assets.

At the time of the closing the bank had on deposit \$178,000 of county funds, for which a bond, signed by the directors of the bank, was given as security. The status of the bank at the present time is such that it is now proposed to assign to another bank most of the assets and liabilities, and in this assignment it is proposed that \$78,000 of the county's funds will be immediately available and paid by the assignee bank.

It is further proposed that the directors of the bank will form a corporation with a capital stock of \$100,000 and acquire from the Superintendent of Banks all of the unliquid securities of the bank which amount to approximately \$360,000. With respect to the remainder of the obligation to the county, namely, \$100,000, a proposition has been made to the county commissioners that they compromise by releasing the obligation of the bank for this amount and accepting in lieu thereof the obligation of the holding corporation, formed by the directors, such obligation to be secured by either a mortgage or a lien upon the assets of the holding corporation, and also another bond similar to the original bond, guaranteeing the deposit, which will guarantee the obligation of the holding corporation and be executed personally by the directors.

The county commissioners are favorably inclined toward the proposal submitted, but have had some question as to their authority to compromise the claim under the circumstances outlined above.

I would therefore appreciate an opinion from your office upon the question as to the authority to compromise a claim of this character under either the provisions of section 2416 of the General Code or any other pertinent section.”

It is to be noted that the form of proposal submitted with your request states that the bank purchasing the liquid assets of the closed bank will assume the obligations of the closed bank to its depositors. It also provides that the sureties on the obligation of the bank to the county agree to remain liable as sureties for the full payment of the county's claim.

Section 2416, General Code, to which you refer, reads as follows:

"The board may compound or release, in whole or in part, a debt, judgment, fine or amercement due the county, and for the use thereof, except where it, or either of its members, is personally interested. In such case the board shall enter upon its journal a statement of the facts in the case, and the reasons for such release or composition."

Section 2408, General Code, which provides for the bringing of suits and actions by the county commissioners, has also been construed as granting power to them to effect compromises. *State of Ohio ex rel vs. Commissioners*, 16 O. C. C. (n. s.) 144.

It is well settled in this state that the deposit of public funds made under the authority of the depository law creates the relationship of debtor and creditor between said depository and the state. The same relationship exists in regard to funds deposited by a county in a regular county depository. Opinions of the Attorney General for 1931, No. 3124. It therefore appears that section 2416 would apply to the situation here under consideration.

The case of *Shanklin et al vs. Commissioners of Madison County*, 21 O. S., 575, is pertinent to your inquiry. In that case the question presented was, whether county commissioners had the authority to accept a banker's certificate of deposit in reimbursement of the loss caused by the embezzlement of public funds in the custody of the county treasurer. The court stated:

"Did the commissioners exceed their powers in assuming to accept the transfer of the certificate in satisfaction and discharge of the treasurer's liability on account of his embezzlement. In our opinion they did not.

It may be laid down as a general rule, that the board of county commissioners is clothed with authority to do whatever the corporate or political entity, the county, might, if capable of rational action, except in respect to matters the cognizance of which is exclusively vested in some other officer or person. Only what the county might not do, it may not, except as aforesaid. It is, in an enlarged sense, the representative and guardian of the county, having the management and control of its financial interests. *The State v. Piatt et al.*, 15 Ohio, 15, 28; *Carder v. The Com'rs., etc.*, 16 Ohio St., 353; *VanKirk v. Clark et al.*, 16 Serg. & Rawle, 286, 290; 2 Wallace (U. S.) 501.

It cannot be contended that the county, if capable to act, might not, in any lawful way, adjust and accept satisfaction of a liability justly and legally due to it. Such was the liability of Horace Putnam incurred by his embezzlement. To satisfy that indebtedness the county might have invoked judicial process, or, in its discretion, have accepted, by amicable arrangement, anything of value in which commercial payment is accustomed to be made."

From the foregoing, it is apparent that in the event of the liquidation of a county depository, the county commissioners have power to enter into an agreement deferring the payment of county funds from such depository, when, in the absence of collusion or an abuse of discretion, they determine that such action is for the best interests of the county.

An examination of the proposal submitted discloses no time limit set for the

complete payment of the county's claim by the holding company. It is suggested that such a limit be set in the proposal before approved by the county commissioners.

In view of what has been said, it follows that the compromise is a matter for the consideration of the county commissioners as to its precise terms and, accordingly, I express no opinion thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3177.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTORS IN PAULDING AND PERRY COUNTIES—M. D. COOKINGHAM, B. B. BURNS.

COLUMBUS, OHIO, April 23, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted two bonds, each in the penal sum of \$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials as hereinafter listed:

M. D. Cookingham, Resident District Deputy Director, Paulding County.
—The Fidelity and Casualty Company of New York.

B. B. Burns, Resident District Deputy Director, Perry County,—The Ohio Casualty Company, Hamilton, Ohio.

Finding said bonds to have been properly executed, I have accordingly approved the same as to form, and return them herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3178.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN THE CITY OF COLUMBUS, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, April 24, 1931.

The State Office Building Commission, Columbus, Ohio.

GENTLEMEN:—You have submitted for my examination and approval an abstract of title of a certain parcel of land situated in the city of Columbus, Franklin County, Ohio, the same being 31½ feet east and west by 90 feet north and south out of the northeast corner of inlot No. 126 in said city, as the same is numbered