In reaching this conclusion I am not unmindful of the provision of Section 5625-9, which requires the establishment of a separate fund for moneys held in trust. This provision should, of course, be followed and the books of the board of education should accurately reveal the condition of the trust in question. This is in no wise inconsistent with the terms of the will, but is merely a mandate requiring proper accounting for the trust. In the absence of any statutory provision, it would follow as a matter of good business practice and proper fulfillment of the duties of trustees that such accounts be kept. In my opinion, however, it by no means follows that these moneys must be treated as public moneys subject to the depositary law. In fact, the opposite conclusion is deducible, since it is clear that the Legislature intended that all trust funds should be kept separate and distinct from other moneys.

In view of the foregoing, and in specific answer to the first inquiry, I am of the opinion that The Security Bank and Trust Company would not be liable for the depositary rate of interest upon the funds in question, the rate upon such funds being the subject of contract between such bank and the board of education acting as trustee under the terms of the will. It also follows that the bank need not give bond for the security of such funds unless such a requirement be incorporated in the contract between the bank and the board of education as such trustee.

What I have heretofore said constitutes a substantial answer to the remaining inquiry. The board is responsible as a trustee and its individual members will be held liable for the proper administration of the trust in question. If the board as such trustee sees fit to have disbursement of the funds in question made, upon check signed by the clerk of the board alone, I cannot say as a matter of law that such course cannot be followed. The fact that payments of this character are not in accordance with the provisions of Section 4768, supra, is not in my opinion material. That section refers solely to the disbursement of school funds for school purposes and hence is not applicable. Any proper method of disbursement of the trust funds which will fulfill the obligations of the board as trustee, will, in my opinion, be sufficient.

Accordingly, I am of the opinion that no finding for recovery would be justified in the specific instance concerning which you inquire, and that a board of education may, under the provisions of Section 4755 of the General Code, supra, adopt such method of procedure in the administration of the trust as may to it seem proper, subject always to the control of the courts with respect to the administration of such trust.

Respectfully;
EDWARD C. TURNER,
Attorney General.

2612.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF FOREST E. ROBERTS IN BENTON TOWNSHIP, PIKE COUNTY, OHIO.

COLUMBUS, OHIO, September 22, 1928.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You recently turned over to this department a communication received by you from one E. H. Jackson, an abstractor of titles of Waverly, Ohio, in which, after referring to Opinion No. 2379 of this department relating to a corrected abstract of title of certain lands in Benton Township, Pike County, Ohio, standing in the name of one Forest E. Roberts, Mr. Jackson says:

"If you will have the Attorney General advise me what specific performance is necessary to correct this title, I will at once proceed to the utmost of my ability to comply, and if I find it impossible, I will then have you return the deed to Mr. Roberts."

The land above referred to is more particularly described in Opinion No. 1941 of this department, addressed to you under date of April 6, 1928. As pointed out in this opinion as well as in the later opinion of this department above referred to, the record title of Forest E. Roberts to this land is hopelessly defective. In fact, although Mr. Roberts may, perhaps, have an equitable title to such lands he does not, so far as the records are concerned, have any legal title whatever to said lands.

In a corrected abstract later submitted to me and which was the subject of Opinion No. 2379 referred to in Mr. Jackson's communication, an attempt was made to show that Forest E. Roberts had legal title to said lands predicated upon the claim made in certain affidavits incorporated into said abstract that said Forest E. Roberts and his predecessors, C. E. Still and Warren Hamilton, had held actual, continuous, notorious and exclusive possession of said lands for more than twenty-one years and that thereby prescriptive title to the same had been acquired.

Inasmuch as said affidavits consisted largely of conclusions, with respect to the matter of the adverse possession claimed, rather than of facts upon which this department could determine whether said Forest E. Roberts now held prescriptive legal title to said lands, and inasmuch as it affirmatively appeared from the abstract that said Warren Hamilton had died in Adair County, Missouri, in 1911, seven years after he and said C. E. Still had obtained tax title certificate to these lands, and it further appeared that said C. E. Still was an actual resident of Missouri, said affidavits were deemed unsatisfactory by this department and the corrected abstract of title was accordingly disapproved and returned to you, together with the deeds and other files pertaining to the proposed purchase of these lands.

Candor compels the view that consistent with the facts, it will be wholly impossible for any showing to be made by affidavit or otherwise which will convince me that said Forest E. Roberts has prescriptive legal title to said lands, and I do not think it worth while for Mr. Jackson or any other person to proceed further along this line.

Of course, the legal title to the lands here in question resides somewhere; and the same is in the heirs or devisees of A. J. Miller, who was the owner of record of said lands at the time the same was sold on tax title certificate to Charles H. Wiltsie, or in their assigns.

If said Forest E. Roberts can obtain quit claim deeds from the person or persons now holding the legal title to said lands and thereby obtain such legal title in his own name, or if, by proper proceedings to quiet title to said lands, the legal claims of such persons are cut off and barred, it will then be time for your department to take up with Mr. Roberts the proposition of purchasing said lands, if you still desire the same for the intended purpose; otherwise I am of the opinion that the disapproval of this department should stand as made and that the records of your office pertaining to the proposed purchase of these lands should be closed accordingly.

Respectfully,
EDWARD C. TURNER,
Attorney General.