

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1431.

FEMALES AND MINORS EMPLOYED BY SUPERINTENDENT OF BANKS—LIQUIDATION AND DISTRIBUTION OF ASSETS OF CLOSED BANKS—EMPLOYEES OF STATE OF OHIO (Opinion No. 5130, 1936, followed)—HOURS OF EMPLOYMENT.

SYLLABUS:

1. *Females and minors employed by the Superintendent of Banks engaged in the liquidation and distribution of assets of closed banks, pursuant to the provisions of Section 710-94, et seq. of the General Code of Ohio, are employees of the State of Ohio (Opinion No. 5130 of the Attorney General issued February 1, 1936, in so far as applicable, affirmed and followed.)*

2. *There being no special provision in Sections 1008 to 1008-11, inclusive, and Section 12996, and sections which must be construed in pari materia therewith, relating to the hours of employment of females and minors, making such employecs of the State of Ohio amenable to said provisions of law, females and minors so employed are not amenable to said provisions of the Code on the principle that the state is not bound by the terms of a general statute unless it be so expressly provided.*

COLUMBUS, OHIO, November 4, 1937.

HON. S. H. SQUIRE, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

“At the last regular session of the General Assembly Sections 1008 to 1008-11, inclusive, and Section 12996 of the General Code, were enacted and became effective on August 19, 1937. The sections referred to place limitations upon

the hours per week and per day that females and minors may be employed.

I will appreciate your opinion as to whether or not the sections referred to apply to the Superintendent of Banks in his employment of females and minors in connection with the liquidation and distribution of assets of closed banks pursuant to the provisions of Section 710-94 of the General Code of Ohio."

In order to answer your question, it is necessary to determine the status of females and minors employed in connection with the liquidation and distribution of assets of closed banks pursuant to the provisions of Section 710-94, et seq., of the General Code of Ohio.

In the foregoing connection, your attention is directed to the opinion of my predecessor, being No. 5130, issued on February 1, 1936. That opinion had to do with the determination of whether or not services performed in connection with the liquidation of state banks by employees of the Superintendent of Banks were within the term of "employment" as defined by Section 210(b), 811(b) and 907 (c) of the Federal "Social Security Act" (42 U. S. C. A., Sections 301 to 1305).

The "Social Security Act" in question exempted from its provisions those engaged in "* * * service performed in the employ of a state * * *."

In the opinion in question it was held such employees did not come within the provisions of said "Social Security Act" for the reason that such employees came within the exemption quoted. In other words, the activities of said employees were found by the Attorney General to be in the category defined as "service performed in the employ of the state."

The conclusions of the Attorney General in said finding in said case are herewith concurred in and said opinion is herewith affirmed and followed.

This leaves only one other matter to be considered before answering your inquiry and that is—is an employee of the State of Ohio within the terms and provisions of Sections 1008 to 1008-11, inclusive, and Section 12996 of the General Code, heretofore referred to.

Section 1008-3 of said provisions of law provides in part, as follows:

"* * *

(b) 'Employer' includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or *other person having control or custody*

of any employment, place of employment or of any employe."
(Italics the writer's.)

Unless the Superintendent of Banks comes within the category of "or other person having control or custody of any employment, place of employment or of any employe," it necessarily follows that his employees do not come within the foregoing cited provisions of law.

The answer to the foregoing inquiry resolves itself into the question, simply stated, is the State bound by the foregoing quoted provisions of law?

The general principle of law applicable in the above connection is well set forth in 37 O. Jur., p. 804, Section 479, wherein it is asserted, in part:

"The doctrine seems to be that a sovereign, which can make and unmake laws, in prescribing general laws, generally intends thereby to regulate, not its own conduct, but that of its subjects. Accordingly, the State is not bound by the terms of a general statute unless it is so expressly enacted.
* * *"

Numerous decisions of the Ohio Supreme Court, asserting this principle of law, can be found. As exemplary of them all, reference is made to the case of *State ex rel. Cappeller*, 39 O. S. 207, wherein it is set forth in the first branch of the syllabus that:

"* * * The state is not bound by the terms of a general statute unless it be so expressly enacted."

It is my conclusion, therefore, in specific answer to your question, that female employees of the Superintendent of Banks, engaged in the liquidation and distribution of assets of closed banks, pursuant to the provisions of Section 710-94, et seq. of the General Code of Ohio, are employees of the State of Ohio and, as such, are not amenable to the provisions of Sections 1009 to 1008-11, inclusive, of the General Code of Ohio, for the reason that there is no special provisions in such sections of the code making employees of the State of Ohio amenable thereto. The general provisions of the statute cannot bind the State for the reasons set out above.

Inasmuch as there is no special provision of the Code which makes a minor, working for the State of Ohio, amendable to the provisions of Section 12996 and other sections which must be con-

strued in *pari materia* therewith, for the reasons set forth above, it is my opinion that a minor, employed by the Superintendent of Banks in connection with the liquidation and distribution of assets of closed banks, pursuant to the provisions of Section 710-94, et seq., of the General Code, is not amenable to the provisions of said Section 12966 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1432.

RETIREMENT BOARD, STATE TEACHERS RETIREMENT
SYSTEM—BIDS ON BONDS—NOT REQUIRED TO FILE
BONDS OR CERTIFIED CHECK, WHEN.

SYLLABUS:

When the Retirement Board of the State Teachers Retirement System bids upon bonds advertised pursuant to the provisions of Section 2293-28, General Code, such Board is not required to file with its bid a bond or certified check as provided in such section.

COLUMBUS, OHIO, November 5, 1937.

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

GENTLEMEN: Your letter of recent date is as follows:

“Section 2293-28, G. C., provides that when bonds are sold ‘Every bidder shall file with his bid a bond or certified check in an amount specified in the advertisement but not less than one per cent of the amount of the bonds or notes to be sold.’

Will you kindly render your opinion as to whether the foregoing provision requires this Board to put up such certified check or bond when bidding upon bonds therein referred to.”

Section 2293-28, General Code, to which you refer, being one of the sections of the Uniform Bond Act, provides that all bonds and notes issued thereunder having a maturity of more than two years, after being rejected by the trustees or commissioners or other officers