

## OPINION NO. 948

## Syllabus:

Where a board of county commissioners acting in accordance with Section 135.07, Revised Code, has determined that there will be no public moneys subject to its control to be awarded to public depositories as directed by Section 135.11, Revised Code, public moneys coming under the control of the board within the two-year period defined in Section 135.11, Revised Code, are in excess of the aggregate amount estimated by such board and may be awarded to public depositories under the authority of Section 135.12, Revised Code, but the period of designation of and awards to such depositories will commence on the date specified by the board of county commissioners and end on the date which is two years from the expiration of the next preceding designation of depositories as defined in Section 135.11, Revised Code.

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To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio  
By: William B. Saxbe, Attorney General, March 24, 1964

Your request for my opinion reads:

"I should like your informal opinion on the following matter: Our Board of County Commissioners had always had contracts for public depositories running for two (2) years, of which the last one ended December 31, 1963. Due to the fact that we had an appraisal, our Commissioners did not believe we would have any money to put in public depositories, so they did not have the usual resolution, advertising, nor were any awards made.

"My question is this: 'May they now advertise, call for bids and award said depositories commencing as of March 1, 1964 or April 1, 1964, and ending two (2) years thereafter, or should they call for less than two (2) years' contracts and award the contracts ending December 31, 1965, which would be two (2) years from the expiration of the old contract.'"

Section 135.11, Revised Code, after providing for the biennial meetings of the State Board of Deposits, reads in part as follows:

"\* \* \* Each other governing board shall meet every two years on the third Monday of the month next preceding the date of the expiration of its designation of depositories for the purpose of designating the public depositories of the public moneys of the subdivision, and at such meeting, or any adjourned session thereof, shall designate such public depositories and award the public moneys of the subdivision to and among the public depositories so designated, for the period of two years commencing on

the date of the expiration of the next preceding designation. Such designation and award shall be made in duplicate; one copy shall be retained by the governing board of the subdivision and one copy shall be certified to the treasurer."

Section 135.07, Revised Code, requires governing boards, including a board of county commissioners, to estimate the aggregate maximum amount of public funds to be awarded and on deposit as inactive deposits. This estimate must be made at least three weeks prior to the date that public depositories are to be designated pursuant to Section 135.11, Revised Code. This section also provides that all deposits in excess of the aggregate estimated inactive deposits shall be active deposits.

Your inquiry leads me to the conclusion that the estimate was made pursuant to Section 135.07, Revised Code, but because it was anticipated that there would be no funds to be awarded to depositories, no awards were made. Had any public depositories been designated and awards made in accordance with Section 135.11, Revised Code, such awards would have been for the period of two years from the date of expiration of the prior designation, or, in the situation you have described, two years from December 31, 1963.

Section 135.12, Revised Code, directs the procedure to be followed where, during a period of designation, the public funds are in excess of the inactive and active deposits formerly estimated. The first two paragraphs of that section read:

"Whenever, during a period of designation, the amount of the public moneys of the state or of a subdivision is in excess of the aggregate amount of inactive and active deposits as estimated by the proper governing board prior to the beginning of the period of designation, and the board finds that all or part of such excess should be deposited as inactive deposits and that such excess cannot be so deposited in existing depositories of the inactive funds of the state or the subdivision because of the limitations of sections 135.01 to 135.23, inclusive, of the Revised Code, the board shall meet and designate additional public depositories of the inactive deposits of public moneys subject to its control for a period commencing on a specified date and ending on the date of the expiration of the current period of designation. Sections 135.07, 135.08 and 135.09 of the Revised Code shall be complied with in awarding and maintaining inactive deposits for such period.

"If such portion of such excess amount as the board finds should not be deposited as inactive deposits is, when added to the amount of active deposits of the state or subdivision which the board estimates to be deposited or subject to deposit during the remainder of the period of designation, greater than the aggregate amount of active deposits of such public moneys, applied for by the existing depositories thereof, the board shall, at such meeting, award the active deposits of the public moneys subject to its control to public depositories thereof for a like period. Sections 135.07 and 135.10

of the Revised Code shall be complied with in awarding and maintaining active deposits for such period."

Although, because of the financial condition existing at the time prescribed by Section 135.11, Revised Code, no public depositories have been designated and no awards made, it is my opinion that Section 135.12, Revised Code, controls the procedure to be followed by the board of county commissioners and that awards now made will begin on the date specified by the board and continue until the end of a period of two years commencing on the date of the expiration of the next preceding designation.

The language of Chapter 135, Revised Code, leads me to the conclusion that the General Assembly did not contemplate that there could be a break in the continuity of periods of designation. Section 135.11, Revised Code, directs that the designation of public depositories and the awards of public moneys made by the State Board of Deposits shall be for a period of two years beginning on the first Monday of April in the odd-numbered years; the designation and awards made by other governing boards are for two-year periods, and these are continuous, with one beginning when the preceding one expires.

Section 135.12, Revised Code, shows that deposits of funds in excess of those formerly estimated can be made only for the remaining portion of the period of designation as determined by Section 135.11, Revised Code. The funds which will now be awarded to depositories are public moneys in excess of the aggregate amount of deposits estimated by the board of county commissioners prior to the beginning of the period of designation. As directed by Section 135.12, Revised Code, Sections 135.07, 135.08, and 135.09, Revised Code, must be complied with in awarding and maintaining inactive deposits, and Sections 135.07 and 135.10, Revised Code, must be followed if the awards are for active deposits.

It is, therefore, my opinion and you are advised that where a board of county commissioners acting in accordance with Section 135.07, Revised Code, has determined that there will be no public moneys subject to its control to be awarded to public depositories as directed by Section 135.11, Revised Code, public moneys coming under the control of the board within the two-year period defined in Section 135.11, Revised Code, are in excess of the aggregate amount estimated by such board and may be awarded to public depositories under the authority of Section 135.12, Revised Code, but the period of designation of and awards to such depositories will commence on the date specified by the board of county commissioners and end on the date which is two years from the expiration of the next preceding designation of depositories as defined in Section 135.11, Revised Code.