

1269

PUBLIC FUNDS — ACCOUNTABILITY — TREASURER OF STATE UNIVERSITY OR UNIVERSITY RECEIVING STATE AID—AMENABLE TO PROVISIONS, §135.16 RC—5317 OAG 1942, p. 503, NO LONGER DECLARATIVE OF THE LAW (MODIFIED BY SUBSEQUENT LEGISLATION).

SYLLABUS:

The treasurer of a university receiving state aid is amenable to the provisions of Section 135.16, Revised Code. Opinion No. 5317, Opinions of the Attorney General for 1942, page 503, modified.

Columbus, Ohio, November 8, 1957

Hon James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have your request for my opinion as to whether or not state universities are required to follow the provisions of Chapter 135., Revised Code, in making deposits of their funds. Your request reads in pertinent part:

“Specifically, has 1942 O.A.G. No. 5317 been overruled by the provisions of Section 131.11?”

The syllabus of Opinion No. 5317, Opinions of the Attorney General for 1942, page 503, to which opinion you refer in your request reads :

“1. The Uniform Depository Act has no application to university funds lawfully retained in the custody of the treasurer of Kent State University.”

“2. There is no statutory provision which authorizes or requires the treasurer of the university to deposit such funds in any bank, and any deposit made by him will be at his own risk both as to the funds deposited and any collateral or other security which he may exact or receive in connection with such deposit.”

When the 1942 opinion was written Section 2281-1c, General Code, Section 131.11, Revised Code, prohibited certain officers from depositing funds until there was a hypothecation of securities as provided for in Section 2296-15a, General Code, Section 135.16, Revised Code. A treasurer of a state university was not one of the officers enumerated in Section 2288-1c, General Code, until the statute was amended in 1943 by the addition of the emphasized language to the amendment which reads :

“No money held or controlled by any probate court, juvenile court, clerk of courts, sheriff, county recorder, clerk or bailiff of municipal court, prosecuting attorney, * * * resident division or district deputy directors of the state highway department, *or treasurer of a university receiving state aid*, in excess of that covered by federal deposit insurance as hereinafter prescribed shall be deposited in any bank, banks, trust company or trust companies until there is a hypothecation of securities as provided for in General Code Sec. 2296-15a, or until there is executed by the bank, banks, trust company or trust companies selected, a good and sufficient undertaking, payable to the depositor, in such sum as said depositor directs, but not less than the excess of the sum that shall be deposited in such depository or depositories at any one time over and above such portion or amount of such sum as shall at any time be insured by the federal deposit insurance corporation created pursuant to the act of congress known as the banking act of 1933, or by any other agency or instrumentality of the federal government, pursuant to said act or any acts of congress amendatory thereof.” 120 Ohio Laws 180.

(Emphasis added)

It is clear that the above quoted amendment to what is now Section 131.11, Revised Code, makes the treasurer of a university receiving state

aid amenable to the provisions of Section 135.16, Revised Code. Also by reason of such amendment Opinion No. 5317, Opinions of the Attorney General for 1942, page 503, is no longer declarative of the law insofar as it holds that the treasurer of a state university is not amenable to Section 135.16, Revised Code, and such opinion is, therefore, modified.

Respectfully,

WILLIAM SAXBE

Attorney General