

2090.

UNIFORM DEPOSITORY ACT—TREASURER OR OTHER OFFICER EXERCISING FUNCTIONS OF TREASURER OF SCHOOL DISTRICT—ONLY OFFICIAL AUTHORIZED TO PAY SCHOOL FUNDS INTO PUBLIC DEPOSITORY AND WITHDRAW SUCH FUNDS — COUNTY AUDITOR—NO AUTHORITY TO PAY SUCH FUNDS TO PUBLIC DEPOSITORY.

SYLLABUS:

1. *Under the Uniform Depository Act, the county auditor has no authority to pay the funds of a school district of his county directly to a public depository.*

2. *The treasurer or other officer exercising the functions of treasurer of the school district is the only official authorized under such Act to pay funds into public depositories and withdraw funds therefrom.*

COLUMBUS, OHIO, March 14, 1938.

HON. A. C. L. BARTHELMEH, *Prosecuting Attorney, Stark County, Canton, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date, viz:

“Under General Code Section 4769, where depositories for school funds were created under the provisions of Sections 7604 and 7608, inclusive, it was the duty of the county auditor to pay all moneys of a subdivision directly into the depository or at least this is the practice which has been followed in this county and was the law as we understand it. Sections 7604 and 7608 have been repealed by the enactment of the Uniform Depository Law and the question now arises as to whether or not the county auditor shall now pay funds to the clerk-treasurer of the board or whether or not it shall be paid directly to the depository.”

An examination of the Uniform Depository Act will make it patent that a school district is a subdivision as contemplated by the Act. Section 2296-1, subsection “b,” General Code.

Subjection “g” of Section 2296-1, General Code, provides:

“‘Treasurer’ includes the treasurer of state and the

treasurer or other officer exercising the functions of a treasurer of any subdivision.”

The Act as a whole recognizes the treasurer as the executive officer in the matter of the deposit of funds with and the withdrawal from depositories. I shall quote three sections of the act to confirm this statement, viz:

Section 2296-15, General Code.

“Each treasurer may at all times keep in the vaults of his office such amount, as a cash reserve, as may be prescribed by the proper governing board, which such amount shall not be required to be deposited pursuant to the provisions of this act. Each treasurer shall deposit all the remaining public moneys in his possession at the commencement of each period of award in the public depository or depositories designated by the proper governing board, excepting to the extent that provision has been lawfully made for the investment of such public moneys in lieu of their being deposited in a depository or depositories.”

Section 2296-16, General Code.

“Each treasurer, in making the initial deposits of public moneys at the commencement of each period of designation, shall be governed strictly by the provisions of this act with respect to the amount to be deposited in each of two or more depositories. Thereafter during the period of designation, each such treasurer shall deposit all additional public moneys coming into his possession in such depository or among such depositories or additional depositories, within the limits specified in this act, and, as nearly as may be, in the proportions herein specified.”

Section 2296-3, General Code, provides:

“A treasurer and his bondsmen or surety, shall be relieved from any liability for the loss of any public moneys by him deposited in a public depository pursuant to and in compliance with the provisions of this act, if occasioned by the failure of the public depository.”

By reference to Section 2296-23, General Code, it will be seen that Sections 7604 to 7608, General Code, under which the county

auditor of your county heretofore operated, having been repealed are out of the picture and need not be considered herein.

The evident purpose of the last depository act, Amended House Bill No. 326, was to secure uniformity for the state and its subdivisions.

Section I of this act is a definitive section, and it defines the words "treasurer" and "auditor" as used therein, and states specifically that a school district is a "subdivision."

Subsection (b) of Section I further provides:

"In the case of a school district, special taxing or assessment district or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by or pursuant to law, to act as ex-officio treasurer. The subdivision for which such treasurer has been primarily elected or appointed shall be considered to be the 'subdivision' for all the purposes of this act."

Section II provides when the governing boards of subdivisions shall meet and make their awards and

"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.*"

It would seem that if it were the legislative intent to still permit the county auditor to pay the subdivision's distributive share of its school funds directly to the depository, the General Assembly would have provided that the designation and award should have been made in triplicate and one copy, sent to the county auditor, otherwise the county auditor must visit the office of the subdivision treasurer in order to ascertain where he shall pay such money.

Under Section 15a, it is the treasurer who requires the depository to pledge and deposit with him the securities therein designated as indemnity for the public moneys deposited. The treasurer may require additional security for depreciated bonds, etc.

It does seem that if the county auditor is, under the provisions of the Uniform Depository Act, permitted to pay moneys direct to depositories, he should have some word as to their selection, or at least be entitled to know who they are and where to find them.

In order to fortify my contention that the county auditor is out of the picture, I quote Section 22:

“The provisions of this act shall supersede those of any and all prior acts relative to the deposits of public moneys as herein defined, the payment of interest thereon or the giving of security therefor. All public moneys shall be deposited pursuant to the provisions of this act *and not otherwise, anything to the contrary in such prior laws notwithstanding.*”

In the face of these provisions, I see no reason for resorting to rules of statutory construction.

Answering your question specifically, the county auditor, under the law as it now exists, has no authority to pay school funds directly to a public depository. He must pay the funds to the treasurer or other officer exercising the functions of treasurer of the district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2091.

APPROVAL—BONDS, CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO, \$5,000.00, PART OF ISSUE DATED SEPTEMBER 1, 1936.

COLUMBUS, OHIO, March 14, 1938.

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

RE: Bonds of City of Cleveland, Cuyahoga County,
Ohio, \$5,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds in the aggregate amount of \$2,138,000, dated September 1, 1936, bearing interest at the rate of $2\frac{3}{4}\%$ per annum.

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