

1537.

APPROVAL, NOTES OF SARDINIA VILLAGE SCHOOL DISTRICT,
BROWN COUNTY, OHIO—\$4,748.00.

COLUMBUS, OHIO, September 11, 1933.

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

1538.

APPROVAL, NOTES OF CROWN CITY RURAL SCHOOL DISTRICT,
GALLIA COUNTY, OHIO—\$295.00.

COLUMBUS, OHIO, September 11, 1933.

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

1539.

APPROVAL, NOTES OF MARYSVILLE VILLAGE SCHOOL DISTRICT,
UNION COUNTY, OHIO—\$6,967.00.

COLUMBUS, OHIO, September 11, 1933.

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

1540.

BONDS—HOME OWNERS' LOAN BONDS ACCEPTABLE FROM DEPOSITORY BANK IN EXCHANGE FOR FIRST MORTGAGES HELD BY POLITICAL SUBDIVISION AS SECURITY FOR DEPOSIT OF PUBLIC FUNDS WHEN.

SYLLABUS:

1. Bonds authorized by the Home Owners' Loan Act of 1933 may be accepted from a depository bank in exchange for first mortgages held by a county, municipality, township or school district as security for the deposit of its public funds only when such bank has defaulted in its depository contract and when the county commissioners, council, township trustees or board of education have determined such

action to be advisable with a view to conserving the value of such mortgages for the benefit of such subdivision and for the benefit of the depositors, creditors and stockholders or other owners of such bank.

2. *When such exchange has taken place, the same rights exist as to such bonds as existed with reference to the mortgages exchanged.*

COLUMBUS, OHIO, September 11, 1933.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I acknowledge receipt of your communication in which you ask the following questions:

“Question 1. May a municipality legally accept Home Owners’ Loan Bonds in exchange for first mortgages?”

Question 2. If permitted to accept Home Loan Bonds in exchange for first mortgages may the municipality legally sell such Home Loan Bonds at their market value?”

I understand that your questions relate to first mortgages which were pledged by a bank to secure the deposit of public funds and that such bank has defaulted in its depositary contract. By reason of the fact that a number of mortgagors and banks are desirous of having such bonds substituted for mortgages which have been taken by a subdivision to secure public deposits, under authority of section 2288-1, General Code, inquiries have come into this office as to the right of a subdivision to accept such bonds. I shall therefore endeavor in this opinion to answer these inquiries which relate both to banks which have defaulted in their depositary contracts and banks which have not so defaulted. This opinion, however, will be confined to the exchange or substitution of such securities with the pledgor bank, and not with third persons.

Public officials have only such authority to deposit public funds as has been expressly conferred upon them by statute, and this office has taken the position that statutes authorizing public officials to accept security for such deposits should be strictly construed, and that such officials can accept only such securities as the law authorizes them to accept. Opinions of the Attorney General for 1912, page 444; Opinions of the Attorney General for 1927, Vol. I, page 28.

The Home Owners’ Loan Act of 1933, approved by the President June 13, 1933, authorizes the creation of the Home Owners’ Loan Corporation, an instrumentality of the United States, which is authorized to issue bonds in an aggregate amount not exceeding two billion dollars. Such bonds may be sold or exchanged for home mortgages, as provided in said Act.

As to banks which have made no default in their depositary contracts, home owners’ loan bonds cannot be taken in exchange for first mortgages which had been pledged to secure public deposits, unless there is statutory authority to accept such bonds as security for the deposit of public funds. None of the statutes relating to the deposit of public funds expressly mention home owners’ loan bonds, as such bonds were unknown at the time of the enactment of such statutes, and I do not find that such bonds come within any of the classes of securities mentioned by such statutes. Section 2288-1, General Code, authorizes the taking of first mortgages and bonds secured by first mortgages. While these bonds are authorized by act of Congress to be exchanged for first mortgages, they are not secured by first mortgages, neither are they obligations of the United States or obligations for the payment of which the faith of the United States is pledged,

as mentioned in sections 2732, 4295, 7605 and 7607, since the act of Congress authorizing the bonds provides that only the interest thereof shall be guaranteed by the United States. Section 2735, General Code, with respect to securities taken to secure county funds, reads in part as follows:

“* * The commissioners may make provisions for the exchange and release of securities and the substitution of other securities or of an undertaking therefor.”

There is nothing in this statute which indicates an intention to permit securities to be exchanged for other securities which are not permitted by the depositary statutes to be accepted as security for the deposit of county funds.

As to banks which have defaulted in their depositary contracts, section 1 of House Bill 706, passed as an emergency measure July 1, 1933, reads as follows:

“In the case of any default, whether occurring before or after the passage of this act, on the part of a bank in its capacity as depositary of the money of any county, municipal corporation, township or school district, the county commissioners of such county, the council of such municipal corporation, the trustees of such township, and the board of education of such school district may and are hereby authorized, in lieu of immediately selling the securities received and held as security for the deposit of such money under authority of sections 2732, 4295, 7605, 7607, or 2288-1 or any other sections of the General Code, to retain the same, collect the interest and any and all installments of principal thereafter falling due thereon, and to refund, exchange, sell or otherwise dispose of such securities, or any of them, at such times and in such manner as such commissioners, council, township trustees, or board of education may determine to be advisable, with a view to conserving the value of such securities for the benefit of such county, municipal corporation, township or school district, and for the benefit of the depositors, creditors and stockholders or other owners of such bank.”

It will be seen that this act gives to the officials mentioned a very broad discretion in the manner in which securities held by them to secure the deposit of public funds may be refunded, exchanged, sold or otherwise disposed of, so long as it is done for the purpose of conserving the value of such securities for the benefit of the subdivision, depositors, creditors and stockholders or other owners of such bank. The purpose of this Act was apparently to eliminate the necessity of putting on the market, upon default of a depositary bank, the securities which it may have pledged to a subdivision, the market value of which securities may be greatly depreciated, and further demoralizing the market to the detriment of all concerned. Bearing in mind the purpose of this legislation and the broad unlimited language used and the wide discretion conferred, I am of the view that it was not the intention of the legislature to limit the kind of securities which may be received in exchange for securities pledged to a subdivision to those mentioned in the depositary statutes.

Your second question relates to the right to sell such bonds. Where an exchange of securities is made with a pledgor bank, under authority of House Bill No. 706, I am of the view that the same rights of sale exist as to the substituted securities as existed with reference to the originally pledged securities, but such exchange should be made only with the express understanding that the

securities taken are only substituted for the original securities and not taken in satisfaction of the debt due the subdivision, and that such subdivision shall have the same rights against the bank which it would have had, had no exchange of securities been made.

I am of the opinion therefore that,

1. Bonds authorized by the Home Owners' Loan Act of 1933 may be accepted from a depository bank in exchange for first mortgages held by a county, municipality, township or school district as security for the deposit of its public funds only when such bank has defaulted in its depository contract and when the county commissioners, council, township trustees or board of education have determined such action to be advisable with a view to conserving the value of such mortgages for the benefit of such subdivision and for the benefit of the depositors, creditors and stockholders or other owners of such bank.

2. When such exchange has taken place, the same rights exist as to such bonds as existed with reference to the mortgages exchanged.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1541.

APPROVAL, NOTES OF PARKMAN RURAL SCHOOL DISTRICT,
GEAUGA COUNTY, OHIO—\$6,106.00.

COLUMBUS, OHIO, September 11, 1933.

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

1542.

APPROVAL, NOTES OF ISLAND CREEK TOWNSHIP RURAL SCHOOL
DISTRICT, JEFFERSON COUNTY, OHIO—\$4,968.00.

COLUMBUS, OHIO, September 11, 1933.

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

1543.

APPROVAL, BONDS OF CUYAHOGA FALLS CITY SCHOOL DISTRICT,
SUMMIT COUNTY, OHIO—\$1,000.00.

COLUMBUS, OHIO, September 12, 1933.

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