

581.

BOARD OF EDUCATION—SECURITIES DEPOSITED BY A DEPOSITARY OF PUBLIC FUNDS SHOULD BE KEPT AT ALL TIMES UNDER THE CONTROL OF THE BOARD.

SYLLABUS:

Securities deposited with a board of education by a depositary of public funds should be kept at all times under the control and dominion of such board.

COLUMBUS, OHIO, June 7, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

The bank which has been selected as the depositary for school funds desires to deposit bonds as security for the deposits made by the board of education. Such bank, however, does not deem it to be safe to deposit government bonds and other bonds with the board of education and therefore makes an arrangement with another bank whereby it deposits the securities with such bank. The bank in which the securities are deposited executes the following receipt:

‘ _____, Ohio.
_____, 1926.

Received of the _____ Bank of _____, Ohio, the following described securities to secure the deposits of the _____ Rural School District: (Then follows a list and full description of the bonds deposited).

This receipt is executed in duplicate, one for the _____ Bank and one for the _____ Rural School District. This receipt is in lieu of all former receipts.

(Signed)

Cashier

_____ Bank,
_____, Ohio.’

The following notice is attached to the receipt:

‘This bank holds these bonds subject to the risk of the owner, giving them the same care as the bank’s own securities, but assumes no obligations as to the genuineness, validity or alteration of such securities or for loss or destruction in any manner.’

Question:

Are the funds of the board of education properly protected by such an arrangement?”

The provisions of law relating to the deposit of school funds are found in Sections 7604, et seq., of the General Code. Section 7605 provides for the security

to be given by the banks designated as depositaries. The pertinent part of that section is as follows:

* * * "Such bank or banks shall give a good and sufficient bond, or shall deposit bonds of the United States, the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, or farm loan bonds issued under the provisions of the act of congress known as the Federal Farm Loan Act, approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum not less than the amount deposited." * * *

Section 7607 of the General Code relates to the deposit of school funds where a school district contains less than two banks. The provision as to security is the same as that quoted above from Section 7605.

You will note that the statute states the securities are to be "deposited" but it does not state with whom the deposit is to be made. It of course follows, however, that the deposit should be with the board of education whose money is secured thereby. The statute is silent as to the care or disposition of the security so deposited.

In a former opinion of this department found in Opinions of the Attorney General for 1921, page 745, these sections, together with other sections relative to the deposit of public funds, were under consideration. The failure of the legislature to make definite provision is there pointed out, but it was held to be clearly the intention to vest in the board of education the authority to receive and the duty to safeguard hypothecated securities. The specific question under consideration was as to the duty of safeguarding the securities and a discussion of this subject relative to boards of education is found on page 750 in the following language:

"By the provisions of the sections cited, it is apparent that the board of education is vested with power and authority to award the contract for the deposit of the school district funds, and is authorized to determine in its resolution 'the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given.'

It is thought that a similar condition prevails in the instance of the school district depository as in that of the county depository, and that the board of education is charged with the duty of providing for the safe keeping of the hypothecated securities under discussion. It is also believed, as in the case of the county commissioners previously discussed, that the liability of the board of education would extend to the execution of this duty only, and that further than the lawful performance of the same is not changed by statute. It is therefore similarly concluded that negligence or dereliction of duty in this particular, occasioning loss of the securities would render the board of education liable, and the extent of such liability could only be determined from the given facts in each particular case."

Since the provision of Section 7605 is that these securities shall be deposited and the inference is plain that the deposit shall be made with the board of education, it is clear that there should be an actual delivery of the securities into the custody of the board. This is necessary in order that the security may be available at once upon default in payment of the funds deposited with the depository bank.

Coming to the specific situation which you present, you will observe that the receipt which you quote acknowledges the receipt, not from the board of education but from the bank. It is true that it is stated in the receipt that the securities are

received to secure the deposits of the board, but nevertheless the delivery of the securities was made by the bank and not by the board. The receipt also recites that it is executed in duplicate, one for the bank and one for the school district. It is quite obvious that where receipts are executed in duplicate, the holder of the securities would be justified in refusing to surrender them without a presentation and surrender of both of the receipts. This would necessarily involve an agreement between the depositary bank and the board as to the right of the board to look to the securities in question.

I deem such a possible situation as clearly objectionable. The hypothecated securities should be in the exclusive control or dominion of the board of education and available without the concurrence of any one else for the purposes for which the deposit was made. For this reason, I am of the opinion that the funds of the board of education in the case which you present are not properly protected by the delivery of the securities to another bank and their receipt in the manner set forth.

This conclusion should not be construed as indicating the impropriety of placing the hypothecated securities in some safe and proper place. I think it would be entirely proper for the board to keep these securities in a safety deposit box or deposit them with some safe institution. It would appear that under such circumstances the duty of the board to provide properly for the safe keeping of these securities had been properly discharged. This would however be a question of fact in each instance and it is unnecessary and improper to lay down any general rule as to liability. Any such arrangement, however consummated, should reserve the exclusive control and dominion over the hypothecated securities in the board of education. It is the lack of this essential element in the case which you present which forces me to the conclusion that the arrangement is improper.

You are therefore advised that the board of education in the instance set forth by you has not provided proper protection for the funds of the school district.

Respectfully,
EDWARD C. TURNER,
Attorney General.

582.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN COSHOCTON AND
MONROE COUNTIES.

COLUMBUS, OHIO, June 7, 1927.

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

583.

DISAPPROVAL, ABSTRACT OF TITLE TO GUILFORD LAKE PARK LAND,
HANOVER TOWNSHIP, COLUMBIANA COUNTY.

COLUMBUS, OHIO, June 7, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my opinion encumbrance estimate No. 3976