

**Note from the Attorney General's Office:**

1965 Op. Att'y Gen. No. 65-137 was modified by  
2018 Op. Att'y Gen. No. 2018-008.

**OPINION NO. 65-137****Syllabus:**

A board of county commissioners, authorized to create public depositories only through a procedure prescribed by statute, may legally enter into a depository contract for active or inactive funds with a bank having as a stockholder and director one of the county commissioners, so long as the statutory requirements are met.

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To: Charles W. Ayers, Knox County Pros. Atty., Mount Vernon, Ohio  
By: William B. Saxbe, Attorney General, July 29, 1965

I have received your request for my opinion which reads as follows:

"The Commercial & Savings Bank, Danville, Ohio, has the depository contract with the County of Knox. This contract was made prior to January 4, 1965, when the term of office of B began as county commissioner. The depository contract will expire this year. B is a shareholder and a member of the board of directors of The Commercial & Savings Bank.

"Will you please advise me whether a new depository contract can be made by the County of Knox with The Commercial & Savings Bank when B is a county commissioner and also a shareholder and director of The Commercial & Savings Bank?

"Your prompt attention to this matter will be appreciated."

The specific issue to be resolved is whether or not, under the particular circumstances you describe, such a depository contract is prohibited by the provisions of Section 305.27 of the Revised Code. Section 305.27, *supra*, provides in pertinent part: "No county commissioner shall be concerned, directly or indirectly, in any contract for work to be done or material to be furnished for the county."

Chapter 135 of the Revised Code prescribed separate procedures for the creation of public depositories of

"active" and "inactive" funds. Section 135.10, Revised Code, prescribing the procedure for the creation of depositories for "active" funds, is germane to your question. This section provides in part as follows:

"An officer, director, stockholder, employee, or owner of any interest in a public depository, receiving active deposits pursuant to this section shall not be deemed to be interested, either directly or indirectly, as a result of such relationship, in the deposit of such active deposits of public moneys for the purpose of any law of this state prohibiting an officer of the state or of any subdivision from being interested in any contract of the state or of the subdivision."

Section 135.09, Revised Code, providing for the deposit of "inactive" funds only by competitive bidding, contains no provision similar to the one quoted above from Section 135.10, Revised Code.

While your question, as it relates to depositories for "inactive" funds, is not answered directly by statute as it is regarding "active" funds, examination of case law reveals that the courts have reached a similar result. In Richardson v. Sycamore Twp., 6 N.P. (N.S.), 505 (1908), the syllabus of the court held:

"A bank making the highest bid for a township depository under Rev. Stat. 1513 is not disqualified under Rev. Stat. 6976 from accepting the award of such funds by the fact that one of its stockholders and directors is a trustee of the township making the award."

The question before the court was the same as the instant one except for the fact that it concerned township trustees and township funds rather than county commissioners and county funds. The reasoning used by the court in arriving at their decision included an analogy to the county situation. The court concluded that it would be unreasonable to hold that the county commissioners were prohibited from making such a depository contract under similar circumstances. Thus, the Richardson case, *supra*, has been repeatedly cited in opinions of this office for the more general proposition that statutory prohibitions against the making of contracts in which the public official is interested do not apply where contracts designating a public depository are made after competitive bidding, as required by statute. See Opinion No. 255, Opinions of the Attorney General for 1912, Vol. II, p. 1246; Opinion No. 1413, Opinions of the Attorney General for 1927, Vol. IV, p. 2585; Opinion No. 1649, Opinions of the Attorney General for 1937, Vol. III, p. 2676; and Opinion No. 2854, Opinions of the Attorney General for 1938, Vol. II, p. 1596.

Thus, when the same question was presented to this office in the context of county funds and county commissioners, the language and reasoning of the Richardson case, supra, compelled a similar conclusion.

In Opinion No. 231, Annual Report of the Attorney General for 1911-12, Vol. II, p. 1173, the then Attorney General held:

"There is no prohibition in the statutes against the award of county funds to a bank of which one of the commissioners is president, where such bank is the successful bidder and all statutory requirements have been complied with."

The president was also a stockholder in that case. The opinion specifically stated at page 1173 "The award of such a contract by the county commissioners is not within the prohibition of Section 2420 or Section 12910 of the General Code." Section 2420, General Code, is now substantially the same as Section 305.27, Revised Code, quoted above. Opinion No. 1895, Opinions of the Attorney General for 1933, Vol. III, p. 1785, considered precisely the same question you have asked. Paragraph 1 of the syllabus of that opinion states:

"1. Boards of county commissioners, boards of township trustees, and boards of education, authorized by statute to create depositories only by competitive bidding, may legally enter into a depository contract with a bank having as stockholders and directors one or more members of the board of the contracting political subdivision."

Granted that the cases and opinions cited above were decided under a different Depository Act and under Section 2420, General Code, an examination of the present controlling statutes, i.e., Sections 135.09, 135.10, and 305.27, of the Revised Code, reveal no meaningful changes relative to the question at hand. Therefore, the reasoning underlying the 1933 opinion is compelling under the present statutes, i.e., since the only manner by which a county depository may be selected is through competitive bidding as prescribed by statute, there is no area for an abuse of discretion on the part of the county commissioner, and therefore no reason to prohibit a contract with a bank in which the commissioner has an interest.

It is therefore my opinion that a board of county commissioners, authorized to create public depositories only through a procedure prescribed by statute, may legally enter into a depository contract for active or inactive funds with a bank having as a stockholder and director one of the county commissioners, so long as the statutory requirements are met.