

brance record No. 1632, relating to the purchase of the above described property, and the same, together with this opinion, are this day directed to the Auditor of State for warrant upon receipt of the proper voucher therefor. A signed copy of this opinion is herewith forwarded to you for the purpose of the Miami University files.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2363.

DEPOSITORY—COMPETITIVE BIDDING UNNECESSARY IN SELECTING DEPOSITORY BANK FOR PUBLIC FUNDS OF SCHOOL DISTRICT WHEN LESS THAN TWO BANKS WITHIN DISTRICT—INTEREST RATE DISCUSSED—FEDERAL DEPOSIT INSURANCE MAY NOT BE ACCEPTED AS SECURITY.

SYLLABUS:

1. *In a school district containing less than two banks it is not necessary for the board of education, when selecting a depository for the public funds of the district, to advertise and receive competitive bids therefor. After adopting a proper resolution, as provided by Section 7607, General Code, the board of education may enter into a depository contract with one or more banks that are conveniently located, that offer the highest rate of interest for the full time the funds or any part thereof, are on deposit.*

2. *A board of education may lawfully enter into a contract with a bank or banks for the deposit of the funds of the district even though such bank or banks offers to pay no more than one-tenth of one per cent interest.*

3. *A school depository bank must furnish such security for deposits made in such bank as the statutes of Ohio prescribe, for the full amount of such deposits. No part of said deposit may lawfully be secured by the federal guarantee or insurance provided for deposits by the Banking Act of 1933.*

COLUMBUS, OHIO, March 13, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Putnam County, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“In the Ottawa Village School District there is but one bank, namely, The First National Bank of Ottawa, Ohio. There is no other bank in the township and there is none located within eight miles. In other words, there is no other convenient bank. Under Section 7607 of the General Code, the school board is wondering whether they can enter into direct negotiations with the only bank and, of course, take whatever they will offer as and for interest. I might add that the rate which

they offer is one-tenth of one per cent, which evidently means only a technical compliance with the section.

My specific questions are these:

(1) Is advertising and competitive bidding necessary under Section 7607?

(2) Can the Board above referred to accept one-tenth of one per cent interest?

(3) If the deposit can be made without bidding and with a small interest rate as indicated in Question 2, then is the bank required to furnish bond for the first \$2,500?"

Section 7607, General Code, in so far as its provisions are pertinent to your inquiry, reads as follows:

"In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, for the full time the funds or any part thereof are on deposit. * * *

Section 7605, General Code, which relates to the selection of a depository by boards of education in school districts in which two or more banks are located, provides that the bank or banks which may be selected as the depository for the school funds of a school district shall be the bank or banks situated in the district "that at competitive bidding offer the highest rate of interest for the full time the funds or any part thereof are on deposit."

Section 7606, General Code, provides that the board shall determine 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 provisions of law providing for the selection of a depository.

It will be observed that Section 7607, General Code, makes no provision whatever for competitive bidding. It provides merely that a contract may be entered into for the deposit of the school funds with "one or more banks that are conveniently located, that offer the highest rate of interest." If there is more than one bank "conveniently located," some effort should be made to determine which one offers the highest rate of interest but formal advertising for bids and the receipt of formal bids are not necessary. Of course, if there is one bank only, that is conveniently located, the receiving of bids would be futile as there could not be competition. The determination of whether or not a certain bank is conveniently located is purely within the discretion of the board of education concerned. See Opinions of the Attorney General for 1918, page 402; Opinion No. 194, rendered under date of March 7, 1933.

Recognition was accorded to the non-requirement for competitive bidding in Section 7607, General Code, in my Opinion No. 1895 rendered under date of November 21, 1933, where it was held:

"The board of education of a school district containing less than two banks is prohibited by Section 4757, General Code, from entering into a depository contract with a bank of which one or more members of the board are stockholders and directors since Section 7607, General

Code, authorizing the creation of such depository does not provide for competitive bidding.”

With respect to your second question, reference is made to the provisions of the statute, Section 7607, General Code, wherein it is provided that the bank or banks offering to pay the “highest rate of interest” shall be selected as the depository in a school district containing less than two banks. The expression “highest rate of interest” was inserted in this statute upon its amendment in 1933 (115 O. L. 419). Previous to the amendment, the statute (as most other statutes providing for public depositories) had provided a minimum rate of interest which a bank must offer in order to qualify as a depository for the public funds of a school district. The manifest purpose of amending the statute in this manner was to remove the minimum requirement as to interest. The phrase “highest rate of interest” is not equivalent, however, to no interest. It imports the paying of some interest, be it ever so little. If some rate of interest is provided for, however small, the statute is complied with, in my opinion. A provision in a depository contract for the payment of one-tenth of one per cent interest would no doubt satisfy the requirement of the statute. That some interest must be provided for, was held in my Opinions Nos. 2151 and 2152 rendered under date of January 11, 1934. In Opinion No. 2151, it was held:

“A state statute, such as Section 7605, General Code, requiring that a contract for the deposit of public funds be awarded to the bank or banks offering the highest rate of interest, implies the payment of interest in some amount, although no minimum rate is stated, and such statute is a state law requiring the payment of interest within the meaning of the proviso contained in Section 11b of the Banking Act of 1933.”

In Opinion No. 2152, it was held:

“The state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the authority of municipal corporations are not permitted, under the several depository laws of this state, to enter into contracts with banks or trust companies for the deposit of the public funds under their control, without interest.”

I come now to a consideration of your third question. In Sections 7605 and 7607, General Code, there are enumerated the kinds and classes of security which a depository bank must furnish to secure deposits of school funds. Boards of education are limited to the acceptance of the classes of securities named in these statutes and if a bank does not offer to furnish the security as fixed by the statute, a lawful depository contract can not be made with the bank nor can school authorities lawfully deposit school funds in such bank unless the bank secures the same in the manner prescribed by the statute. It will be found, upon examination, that the Federal deposit insurance provided for by the Banking Act of 1933, is not one of the classes of securities enumerated in the statute.

In my Opinion No. 2152, supra, it was held:

“The guarantee or insurance of bank deposits afforded by virtue of the Banking Act of 1933, is not such security as may be furnished by a bank under the laws of Ohio, as security for deposits of the public funds of the state, counties, municipalities, school districts and townships within the state.

Unless a bank furnishes proper security for deposits of public funds under the several depository laws of this state relating to the deposit of public funds of the state, counties, municipalities, school districts and townships, lawful contracts for the deposit of these funds can not be made with it, and a bank receiving such deposits with knowledge of the nature thereof, which does not furnish security as provided by the statutes of Ohio, will be held to account in full for the deposits so received, together with all profits accruing therefrom."

In the course of the opinion, it is said:

"Without any doubt whatever, it is the prerogative of the legislature to fix the manner and extent of depositing school funds in banks, and to fix the security for such deposits that may be accepted by the depositor and that must be furnished by the depository bank upon receiving and accepting the deposit. Having done so, it is not within the power of a board of education or its treasurer to make such deposits in a manner otherwise than that fixed by the legislature or to accept as security for such deposits any guarantee or other security than that fixed by the legislature. Any deposits not made in the manner prescribed by law, or secured otherwise than as the statutes prescribe, would be an irregular or unauthorized deposit and under the decisions of our Supreme Court, a bank receiving such an unauthorized deposit of public funds, knowing them to be public funds, will be held to account for the full amount of the deposit and the profits arising from it." (See *Bank vs. Newark*, 96 O. S., 453.)

In specific answer to your questions, I am of the opinion:

1. In a school district containing less than two banks it is not necessary for the board of education, when selecting a depository for the public funds of the district, to advertise and receive competitive bids therefor. After adopting a proper resolution, as provided by Section 7607, General Code, the board of education may enter into a depository contract with one or more banks that are conveniently located that offer the highest rate of interest for the full time the funds or any part thereof are on deposit.

2. A board of education may lawfully enter into a contract with a bank or banks for the deposit of the funds of the district even though such bank or banks offer to pay no more than one-tenth of one per cent interest.

3. A school depository bank must furnish such security for deposits made in such bank as the statutes of Ohio prescribe, for the full amount of such deposits. No part of said deposit may lawfully be secured by the federal guarantee or insurance provided for deposits by the Banking Act of 1933.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2364.

EMBALMERS—LICENSE ISSUED UNDER SECTION 1343 G. C. MUST BE RENEWED IN 1934 UNDER PROVISIONS OF EMBALMERS' AND FUNERAL DIRECTORS' LAW.

SYLLABUS:

The holder of an embalmer's license issued under authority of section 1343,