

4453.

SURETY—DISCHARGED WHEN TOWNSHIP TRUSTEES OR BOARD OF EDUCATION RELEASE CLAIM DUE FROM DEPOSITORY BANK.

SYLLABUS:

1. *The release by a board of township trustees or a board of education, under Sections 3296 and 4749-1, General Code, respectively, of a claim due from a depository bank in liquidation, discharges the sureties on the depository bond.*

2. *Such boards have no power to discharge the sureties on a depository bond except where the principal obligation is released.*

COLUMBUS, OHIO, July 23, 1935.

HON. NICHOLAS F. NOLAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I have your letter which reads in part as follows:

“We respectfully solicit your opinion in connection with the following state of facts:

The Brookville State Bank in our county is in process of liquidation by the state. This Bank was also the public depository for Township Trustees and several Boards of Education. The situation is somewhat complicated, but for the purposes of this request, the following facts may be sufficient.

The public funds which were placed in the Bank were secured by Surety Bonds signed by individuals, probably eleven or twelve, and the same individuals are on four or five different depository bonds. Several of them are financially insolvent, and as a matter of fact two or three of them, or possibly three or four at the most, would be worth a judgment if one were obtained against them for their liability on their depository bonds. However, these same sureties are, in most cases, liable on notes owing the Bank on double stock liability and for other general claims, so that there is, in fact, a substantial question as to whether or not in the final analysis the full amount of their liability could be collected in law.

This leads us to the proposal which was recently made to the various public groups by the agent in charge of liquidating the Bank.

The proposition, in brief, is as follows:

In consideration that the sureties pay ten per cent of their total liability, that they be released from their bonds.

A fifty per cent dividend has already been paid by the liquidator, and it is estimated that another twenty per cent will be paid. So the final loss to general depositors may run near twenty per cent.

The various public groups, representing the boards of education and the township trustees, have all voted to accept the ten per cent settlement. Our office also believes it is the expedient thing to do.

House Bill No. 522, which became effective June 3, 1935, seems to permit the compounding or releasing of such claims, as against the Bank itself, but the question has arisen as to whether or not these individual sureties can be released under such a settlement, and that is the question upon which we desire your informal opinion.

Personally, it is our opinion that although H. B. No. 522 does not specifically authorize the releasing or compounding of a claim against the individual surety on a depository bond, yet we feel that if the claim against the Bank itself is released or compounded, therefore, under the general principles of law same would also redound to the benefit of the sureties.

We understand that the local office of the State Bureau of Inspection and Supervision of Public Offices has some doubt about these individual sureties being released by the settlement with the bank liquidator.

Therefore, we respectfully inquire whether or not you concur in your opinion, that the compounding or releasing of the claim with the Bank would ipso facto operate to release the individual sureties."

House Bill No. 522, 91st General Assembly, was passed as an emergency measure May 16, 1935, and became effective by approval of the Governor May 31, 1935. *State vs. Lathrop*, 93 O. S., 79. Sections 3296 and 4749-1, General Code, were enacted as part of H. B. No. 522.

Section 3296, General Code, reads:

"The trustees of any township may compound or release, in whole or in part, a debt, obligation, judgment or claim due the township, from a bank or banks in process of liquidation or operating under a conservatorship, or due the trustees of the township, except where any member of such board of trustees is personally interested as a stockholder; the board of trustees shall enter upon its records a statement of the facts and the reasons for such compounding or release.

Section 4749-1, General Code, provides:

“The board of education of any school district may compound or release, in whole or in part, a debt, obligation, judgment or claim due the school district, or due the board of education of the school district from a bank or banks in process of liquidation or operating under a conservatorship, except where any member of the board of education is personally interested as a stockholder; the board of education shall enter upon its records a statement of the facts and the reasons for such compounding or release.”

Boards of township trustees and boards of education are thus authorized to compound or release claims due from depository banks in liquidation.

It is a well settled principle that the absolute discharge of the principal debt upon good consideration releases the surety. 50 Corpus Juris, 183; 21 R. C. L., 1065. Since the above statutes authorize the release of the principal debt, it seems clear that if such release is given without any attempt to preserve rights against the sureties, the latter would be discharged. If the sureties are in position to offer settlement satisfactory to the respective public depositors, I see no reason why the liability of the bank should not be released, and am of the view that such release would in turn discharge the sureties.

In your letter you state it is estimated another 20% dividend “will” be paid. From this statement I infer that it is not intended to release the bank from liability by the proposed arrangement. If the bank is not to be released, obviously the release of the sureties cannot be effected upon the principle above discussed.

The only powers possessed by public officers are those derived from statute. *State ex rel. vs. Menning*, 95 O. S., 97; *State ex rel. vs. Cook*, 103 O. S., 465; *Schwing vs. McClure*, 120 O. S., 335. Prior to the enactment of the sections above quoted, boards of township trustees and boards of education were without authority to compromise claims against depository banks in liquidation. *Opinions of the Attorney General*, 1933, Vol. 3, p. 1780; *Opinions of the Attorney General*, 1934, Vol. 1, p. 222. The public bodies in question thus have no power to compromise obligations due them beyond the terms of the newly enacted sections. The authority conferred by these sections is restricted to a claim due “from a bank or banks in process of liquidation or operating under a conservatorship.” This language clearly refers to the principal obligation. Finding no other statutory provision authorizing a board of education or board of township trustees to compromise with the sureties, without extinguishing the principal debt, I conclude that such boards are without that power.

If the sureties can raise sufficient funds they might compromise the entire

deposit liability and take an assignment from the public depositors of their claims to future liquidating dividends.

In view of the foregoing, it is my opinion that:

1. The release by a board of township trustees or a board of education, under Sections 4296 and 4749-1, General Code, respectively, of a claim due from a depository bank in liquidation, discharges the sureties on the depository bond.
2. Such boards have no power to discharge the sureties on a depository bond except where the principal obligation is released.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4454.

APPROVAL, NOTES OF COAL RURAL SCHOOL DISTRICT,
JACKSON COUNTY, OHIO, \$9,568.00.

COLUMBUS, OHIO, July 23, 1935.

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

4455.

APPROVAL, SIXTY BONDS OF HIGHWAY PATROLMEN.

COLUMBUS, OHIO, July 23, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a schedule bond upon which sixty highway patrolmen, appointed under section 2 of House Bill No. 270 (115 O. L. 93), 90th General Assembly, regular session, are principals and the Glens Falls Indemnity Company is surety.

Said bond is undoubtedly entered into pursuant to the provisions of section 1181-2, General Code (section 2 of House Bill No. 270), which reads in so far as pertinent as follows:

“ * * * * * ”

Each highway patrolman upon his appointment and before en-