

2616.

FUNDS—PUBLIC—PROVISION FOR DEPOSITORIES—NOT REQUIRED OF  
COUNCIL—EXCEPTIONS—BIDS—ADVERTISING REQUIREMENTS.

SYLLABUS :

1. *Except as the general law may be modified by authority of the Home Rule provisions of the Constitution of Ohio, the council of a municipality is not required to provide public depositories for the deposit of the public funds of the municipality, but may do so if desired.*

2. *By the terms of Section 4296, General Code, if the council of a municipality determines to provide public depositories for the funds of a municipality, contracts therefor must be let upon competitive bidding after full publicity.*

3. *Council may provide in advertising for bids for public depositories that a bid offering a rate of interest of less than 2% will not be accepted.*

4. *Council may reserve the right in advertising for bids for public depositories to reject any and all bids.*

5. *Council is not bound to accept any bids received for the deposit of the public funds of the municipality whether one or more bids are received.*

COLUMBUS, OHIO, September 24, 1928.

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

GENTLEMEN:—I am in receipt of your request for my opinion as follows:

“Section 4295 and 4296, G. C., provide that the Council of a municipal corporation may advertise for bids for the use of its funds, etc.

QUESTION No. 1. May Council provide in the advertisement for bids that a rate of less than 2% will not be accepted?

QUESTION No. 2. May Council reserve the right to reject any and all bids?

QUESTION No. 3. If Council receives but one bid must it accept such bid?”

The law pertaining to the deposit of municipal funds in charge of a city or village treasurer, except as it may be modified by charter provisions, is contained in Sections 4294, 4295 and 4296 of the General Code of Ohio, which read in part as follows:

Section 4294. “Upon giving bond as required by council, the treasurer may, by and with the consent of his bondsmen, deposit all funds and public moneys of which he has charge in such bank or banks, situated within the county, which may seem best for the protection of such funds, and such deposit shall be subject at all times to the warrants and orders of the treasurer required by law to be drawn. All profits arising from such deposit or deposits shall inure to the benefit of the funds. Such deposit shall in no wise release the treasurer from liability for any loss which may occur thereby.”

Section 4295. “The council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond.

\* \* \*

Section 4296. "In such ordinance the council may determine the method by which such bids shall be received, the authority which shall receive them, and which shall determine the sufficiency of the security offered, the time for the contracts for which deposits of public money may be made, and all details for carrying into effect the authority here given. Proceedings in connection with such competitive bidding and the deposit of money shall be conducted in such manner as to insure full publicity, and shall be open at all times to the inspection of any citizen. As to any deposit made under authority of an ordinance of the council, pursuant hereof, if the treasurer has exercised due care, neither he nor his bondsmen shall be liable for any loss occasioned thereby."

The present law with reference to municipal depositories is substantially the same as was enacted in Section 135 of an act to provide for the organization of cities and incorporated villages and to restrict the powers of taxation, assessments, etc., passed by the General Assembly, October 2, 1902 (96 O. L., 64).

Said Section 135 as contained in this act made provision for a municipal treasurer to deposit public moneys in his hands similar to those now contained in Section 4294, supra, and provided further:

"Council shall have authority to provide by ordinance, for the deposit of public moneys coming into the hands of the treasurer in such bank or banks situated within the city which may offer at competitive bidding the highest rate of interest. \* \* \*"

Said Section 135 was amended in 1904 (97 O. L. 270). No substantial change was made therein by this amendment with reference to the powers of the treasurer and council in so far as those powers relate to the question here under consideration. In the amendment of 1904 the language of the statute empowering council to establish public depositories was unchanged and read as before:

"Council shall have authority to provide by ordinance for the deposit of all public moneys. \* \* \*"

When the statute was codified in 1910 said Section 135 was codified as Section 4293, 4294, 4295 and 4296 of the General Code. The language of Section 4295 as so codified was made to read:

"The council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer. \* \* \*"

This Section, No. 4295, General Code, was amended in 1911 (102 O. L. 122), in 1913 (103 O. L. 114), in 1925 (111 O. L. 51), and again in 1927 (112 O. L. 196). Each time when the statute was amended the permissive language authorizing but not requiring council to provide public depositories was used.

Not only on account of the permissive language used in the statute, but from considerations growing out of the history of the statute it is manifest that the Legislature did not intend to impose a mandatory duty on council to provide depositories for the public funds of which the treasurer had charge but merely to empower it to do so if deemed advisable.

In this connection it is significant to note that the provisions of the statutes with reference to public depositories to be provided by county commissioners, township trustees, and boards of education for counties, townships and school districts are mandatory (Sections 2715, 3320 and 7604, General Code). Moreover, in each instance it

is provided that no depository may be selected that does not agree to pay at least two per cent interest on the funds deposited with it (Sections 2716, 3322 and 7605, General Code).

Section 4295, General Code, limits council in the selection of banks for depositories to a bank or banks in the municipality or county; although, by the terms of Section 4296, General Code, council is authorized to determine the method by which bids shall be received, the authority which shall receive them and determine the sufficiency of the security offered, the time for the contracts for which deposits may be made, and all the details for carrying into effect the authority to provide depositories, except those pertaining to the security of deposits and the publicity of the bidding therefor.

No mention is made in the statute of the limitation of interest to be paid on the deposits. Obviously, this is a detail that is left to council to determine. The only requirement with reference to interest is that if a depository is selected it must be the one which offers proper and sufficient security and the highest rate of interest upon competitive bidding.

In my opinion council is not required to provide a depository even though it advertises for, and receives bids therefor if, after the bids are received it determines that satisfactory offers have not been made. In the absence of any express requirement as to the terms of offers that may be received by way of bids for deposits council clearly has a right to make provision therefor in the nature of specifications as the basis for bids and such specifications may take the form of stating the lowest rate of interest that will be considered in receiving bids and letting contracts thereon.

By reason of council's authority to determine the details of carrying into effect its authority to provide depositories, other than those specifically provided for by the statute, and its right to determine whether or not depositories will be provided at all, it clearly may in advertising for bids reserve the right to reject any and all bids and is not required to let the contract, whether one or more bids are received, but may reject all bids and re-advertise or may reject all bids and determine not to provide public depositories at all.

It should be understood that this opinion is based on the general statutes in force and has no reference whatever to provisions adopted by a municipality under the Home Rule Section of the Constitution of Ohio.

Answering your questions specifically in the order asked, I am of the opinion:

1. Council may provide in advertising for bids for public depositories that a bid offering a rate of interest of less than two per cent will not be accepted.
2. Council may reserve the right in advertising for bids for public depositories to reject any and all bids.
3. Council is not bound to accept any bids received for the deposit of the public funds of the municipality whether one or more bids are received.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*