

the inmates of a county infirmary, as provided by section 2546, General Code, is not an employe within the meaning of the civil service law and is not subject to the provisions of section 486-8, sub-paragraph (b), General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

228.

SECURITY—COUNTY FUNDS—LIMITED TO SECURITIES ENUMERATED IN SECTIONS 2732 AND 2288-1, GENERAL CODE.

SYLLABUS:

County commissioners may not legally accept as security for the deposit of county funds in a county depository, notes of individuals, partnerships, associations or private corporations unsecured by first mortgages on approved real estate in Ohio, or any other securities than those enumerated in Sections 2732 and 2288-1, General Code.

COLUMBUS, OHIO, March 18, 1933.

HON. HOWARD A. TRAU, *Prosecuting Attorney, Bellefontaine, Ohio.*

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

“The Commissioners of Logan County have requested me to obtain from your office an opinion on the acceptance by the Commissioners of first mortgage security in lieu of bonds for county deposits.

In view of the closing of several banks in this community, the Commissioners are desirous of securing something more than a bond by the directors for the safe-keeping of money deposited in the banks by the county.

One case in particular is that of a National Bank which ordinarily does not have many first mortgages on real estate, but most of their paper is notes. Can these notes be accepted by the Commissioners to secure their deposits in lieu of first mortgage notes secured by real estate?”

County Commissioners are directed by law to designate county depositories for the deposit of public funds of the county (Sections 2715 et seq., General Code.)

A bank or trust company designated as a county depository is required to account for the funds deposited with it, and interest on the same in accordance with its depository contract, to secure which it is required by Section 2722, General Code, to hypothecate certain securities or execute a good and sufficient undertaking payable to the county in such sum as the county commissioners direct, but not less in any case than the sum that shall be deposited in such depository at any one time. Said Section 2722, General Code, provides that no award of funds to a depository shall be binding until the said security is given.

Further requirements of an undertaking given to secure county deposits in a county depository are set forth in Section 2723, General Code, and the classes

of securities which may be accepted in pledge of these deposits in lieu of an undertaking as provided in Section 2723, General Code, are listed in Section 2732, General Code. In addition to the securities listed in Section 2732, General Code, it is provided by Section 2288-1, General Code, that it shall be lawful for county commissioners to accept as security for deposits in a county depository "first mortgages, or bonds secured by first mortgages bearing interest not to exceed six per cent per annum, upon unincumbered real estate located in Ohio, the value of which is at least double the amount loaned thereon." See Opinions of the Attorney General for 1931, pages 1372 and 1440.

Upon examination of Sections 2732 and 2288-1, General Code, which are the only two sections of the General Code, listing the classes of securities that may be accepted by way of pledge to secure deposits in county depositories, it will be found that so far as any express authority is concerned, the only kind of notes that may be accepted are "notes of any city, village, county, township or other political subdivision of the state." (See Section 2732, General Code.)

It is a fundamental principle of law, evidenced by many authorities, that boards of county commissioners and other public boards have such powers and such only as are expressly granted to them, together with such incidental powers as may be necessary to exercise the powers expressly granted. *State ex rel Locher, Prosecuting Attorney vs. Manning*, 95 O. S. 97; *State ex rel. Pierce*, 96 O. S. 44; *State ex rel. Clark vs. Cook*, 103 O. S. 465; *Schwing vs. McClure*, 120 O. S. 335.

Applying this principle it clearly follows that county commissioners are without power to accept any other or different securities for county deposits than what are named in the statute.

Laws relating to public depositories are of comparatively recent origin and it is a well established rule that when a statute is passed authorizing a proceeding which was not allowed by the general law before, and directing the mode in which an act shall be done the mode pointed out must be strictly followed. Lewis' Sutherland Statutory Construction, 2nd Edition, Section 627. This rule is grounded on the fundamental rule of interpretation of statutes that "the express mention of one thing implies the exclusion of others." (*Expressio unius est exclusio alterius.*)

The power to select public depositories is an express power to be exercised in a certain manner fixed by law and it is my opinion that the method prescribed is exclusive and implies an inhibition to exercise this power in any other manner than that fixed by the legislature.

In Corpus Juris, Volume 18, page 585 it is stated:

"When the statute expressly specifies the character of the security the depositing officer has no authority to accept any other in lieu thereof."

In support of the text there is cited the case of *Von Vlisington vs. Clay Co.*, 54 Minn. 555, 56 N. W. 251.

Moreover, there is good authority for saying that a depository bank is without power to pledge any other assets of the bank to secure public deposits than that fixed by statute. In the case of *Divide Co., Respondent vs. L. R. Band, Receiver*, 55 N. D., 45, 212 N. W., 236, it is held:

"The business of banking is affected with a public interest, and the legislature may prohibit it altogether, or may prescribe the conditions under which it may be conducted.

* * * *

The legislature has prescribed the mode in which a bank may receive and a public corporation make a deposit of public funds. That mode is

by a personal or surety bond as security. This statute is a part of the corporate charter, in so far as it relates to the exercise of power by a bank. The power is express, not incidental or implied; and when a legislative enactment prescribes one mode of exercising an express power or privilege, it implies an inhibition to exercise the given power in any other way."

In the case of *Farmers State Bank vs. County of Marshall*, 175 Minn. 363, 221 N. W. 242, it is held:

"A bank has no power to pledge any of its assets, particularly bills receivable, to secure the repayment of deposits except as such pledge is authorized by statute to secure deposits of public funds."

In specific answer to your question, I am of the opinion that county commissioners may not legally accept as security for the deposit of county funds in a county depository, notes of individuals, partnerships, associations or private corporations unsecured by first mortgages on approved real estate in Ohio, or any other securities than those enumerated in Sections 2732 and 2288-1, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

229.

MOTOR VEHICLES—MAXIMUM LOAD OF TRUCKS—DETERMINED BY WIDTH OF TIRES SUBJECT TO A MAXIMUM WEIGHT LIMITATION.

SYLLABUS:

By virtue of the provisions of section 7248, General Code, the widths of the tires on all the wheels of a vehicle are to be taken into consideration in computing and determining the gross weight that a vehicle can lawfully have and carry over the highways of this state. However, the maximum load permitted to be carried by a vehicle computed and determined in accordance with the provisions of section 7248, General Code, cannot exceed the maximum load or gross weight allowed by sections 7246 and 7248-1, General Code, to be carried by a vehicle over the highways.

COLUMBUS, OHIO, March 18, 1933.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter which reads as follows:

"The following question has been raised in regard to the operation of trucks on state highways:

The statute provides a limitation as to the number of pounds for each axle and for each wheel. Will the fact that there are double wheels carrying two tires increase the number of pounds allowed? The statutes referred to are Sections 7748 et seq."