4643.

APPROVAL, BONDS OF WINDSOR RURAL SCHOOL DISTRICT, MORGAN COUNTY, OHIO, $5,328.00.

COLUMBUS, OHIO, September 10, 1935.

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

4644.

APPROVAL, PROPOSED AGREEMENT WITH RECEIVERS OF THE CINCINNATI AND LAKE ERIE RAILROAD COMPANY WITH REFERENCE TO HIGHWAY IMPROVEMENT IN CLARK COUNTY, OHIO.

COLUMBUS, OHIO, September 11, 1935.

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

DEAR SIR:—You have submitted for my approval proposed agreement by and between you and the receivers of the Cincinnati and Lake Erie Railroad Company with reference to the improvement of SH (ICH) No. 1, Section A and Springfield (D. T. and I. Overhead No. CL-40-154), Clark County, Ohio.

Finding said agreement in proper legal form, I have accordingly approved the same as to form and return the same herewith. It is suggested, however, that both of the co-receivers be requested to sign said agreement.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4645.

NATIONAL BANK—AUTHORIZED TO SECURE DEPOSITS OF MUNICIPAL COURT WHEN.

SYLLABUS:

Under the Act of June 25, 1930, *c.* 604, 46 *Stat.* 809, *(*12 *U. S. C. A. Sec.* 90*), a national bank can legally secure deposits made under Sections*

2288-1c, et seq., General Code, by the clerk or bailiff of a municipal court, although such deposits may include money received in payment of judgments and other funds which will subsequently be disbursed to private individuals or business associations.

COLUMBUS, OHIO, September 11, 1935.

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

GENTLEMEN:—You have submitted for my opinion a question concerning the interpretation of Section 2288-1c (116 O. L., 409), presented in a letter from Hon. Burt W. Griffin, Chief Justice of the Cleveland Municipal Court. This letter reads in part:

> "In negotiating with the National City Bank of Cleveland with a view of putting into effect the provisions of Sections 2288-1c, et seq., General Code, requiring security for all moneys deposited by the clerk or other officers of the Municipal Court of Cleveland, a question has arisen as to the power of a National Bank to secure moneys deposited by a public officer which are not, in fact, the property of the public, for instance, money coming into the hands of the clerk in payment of judgments, or other funds which belong to and are to be disbursed to individuals."

Section 2288-1c, General Code, reads:

> "No money held or controlled by any probate court, juvenile court, clerk of courts, sheriff, county recorder, clerk or bailiff of municipal court, prosecuting attorney, or resident division or district deputy directors of the state highway department, in excess of that covered by federal deposit insurance as hereinafter prescribed shall be deposited in any bank, banks, trust company or trust companies until the hypothecation of the securities hereinafter provided, or until there is executed by the bank, banks, trust company or trust companies selected, a good and sufficient undertaking, payable to the deposit, in such sum as said depositor directs, but not less than the excess of the sum that shall be deposited in such depository or depositories at any one time over and above such portion or amount of such sum as shall at any time be insured by the federal deposit insurance corporation created pursuant to the act of congress known as the banking act of 1933, or by any other agency or instrumentality of the federal government, pursuant to said act or any acts of congress amendatory thereof."

The sections following concern the form of the undertaking, hypothecation of securities, maximum deposit, release of securities, interest and similar matters.

By the Act of June 25, 1930, c. 604, 46 Stat. 809 (12 U. S. C. A. Sec. 90), the following was added to Section 45, National Bank Act of 1864 (R. S. 5136; 12 U. S. C. Sec. 24, Seventh):

> "Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safe-keeping and prompt payment of the money so deposited of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

It is well settled that prior to this amendment a national bank was without authority to pledge assets to secure public deposits, with the exception of certain deposits by the Secretary of the Treasury of the United States. *Texas & Pacific Ry. Co.* vs. *Pottorff,* 291 U. S. 245, 54 S. Ct. 416, 78 L. Ed. 777; *City of Marion* vs. *Sneeden,* 291 U. S., 262, 54 S. Ct. 421, 78 L. Ed. 787; *Lewis* vs. *Fidelity & Deposit Co. of Maryland,* 292 U. S. 559, 54 S. Ct. 848, 78 L. Ed. 1425. In the last of these decisions Mr. Justice Brandeis said that "the main purpose of the 1930 Act was to equalize the position of national and state banks."

There is no question but that under Section 2288-1c, supra, banks organized and existing under the laws of this state can pledge their assets to secure the deposits in question. If national banks may not do likewise, they will be in a position inferior to that of state banks. It no longer requires citation of authority to sustain the proposition that a legislative grant of authority to a subdivision to accept security implies the vesting of power in banks to pledge it.

In the 1930 amendment Congress limited the pledging of assets of national banks to the securing of "public money" deposited therein. The question arises whether money in the custody of a public officer, by virtue of his office, which will be subsequently disbursed to private persons and business associations, is public money. In this connection the case of *Echerson* vs. *Utter,* 7 F. Supp. 201 (D. C., Idaho) is perhaps worthy of note. This was an action by the receiver of a national bank for the recovery of bonds pledged by the bank to secure funds deposited by the clerk of the state district court and *ex officio* auditor of Ada County. As stated by the court, "These moneys were amounts paid to the clerk by persons as fees, costs, alimony, awards, and as cash bonds in civil cases pending in the state district court."

Referring to the Idaho statute (Section 25-705, I. C. A.), the court said at pages 203-204:

"It will be observed that the statute prohibits the pledging of assets of a state bank as security for any deposit except deposits made (a) by the commissioner of finance, (b) by the United States, (c) of public funds deposited in accordance with the provisions of any depository act of the state or the United States, and (d) by any bursar of any state educational institution or any state officer or any employee of the state or of any of its boards or officers. It is exception (c) 'deposits of public funds in accordance with the provisions of any depository act of this state,' relied upon by the defendant as authorizing state banks to pledge assets to secure deposits, which requires the consideration of the provisions of the depository law of the state, for to constitute 'public funds' they must be such as are recognized by the state depository law, which provides: 'Depositing unit,—Every municipal and *quasi* municipal corporation and improvement district and school district, of every kind, character or class, now or hereafter created or organized by law to levy taxes or special assessments, for which the county treasurer does not act as treasurer, and every county, is a depositing unit: provided, that as to any such depositing unit as herein defined the moneys of which may at any time be in the custody, charge or possession of any county treasurer or tax collector, the county shall be deemed to be the depositing unit with respect to such moneys while the same so remain in such custody, charge or possession, and also of all moneys in the custody, charge or possession, of any county treasurer or tax collector for the credit of any school district or other political subdivision of a county authorized by law to levy taxes, or special assessments and not herein defined as a "depositing unit." '

Section 55-105, I. C. A., defines public moneys as 'all moneys coming into the hands of any treasurer of a depositing unit,' and section 55-107, I. C. A., defines the treasurer as 'the official custodian of public moneys as defined in this chapter.'

The character of the funds deposited in the bank by the defendant were moneys belonging to litigants, and did not belong to the state or any political subdivision thereof, excepting the amounts representing costs and fees going to the county which belong to the county. Those moneys belonging to the litigants were private funds; especially is that true when we apply the provision of the state statute defining what are 'public moneys.' The Supreme Court of the state has often defined under the state statute what are 'public moneys,' and held that the policy of the state to be opposed to the pledging of bank assets as security for deposits, except where specifically authorized by the statute, and the pledging of such assets are

void. *Porter* vs. *Canyon County Farmers Mutual Frie Insurance Company,* 45 Idaho, 522, 263 P. 632."

While the Idaho statute defined public moneys to exclude moneys in the hands of the clerk of the district court, our statute specifically authorizes the deposit of the funds in question. From the court's discussion, I find no depository statute of Idaho specifically covering the funds involved. We have such a statute in Sections 2288-1c to 2288-1j, General Code, and this is believed sufficient to make the Idaho decision inapplicable here. Our statute authorizes the clerk or bailiff of a municipal court to deposit "money held or controlled by" him.

In the past both the legislature and the courts of this state have recognized the public character of money in the hands of a public officer by virtue of his office, although not belonging to the political subdivision. Section 2921, General Code, authorizes civil actions for the recovery of misapplied or illegally drawn "funds of the county or public moneys in the hands of the county treasurer or belonging to the county." In the case of *State ex rel* vs. *Baker,* 88 O. S. 165, it was held that said section applied to money in the custody of the county as bailee, although such funds might not fall within the provisions "funds of the county" or "belonging to the county." The court regarded such funds as "public moneys in the hands of the county treasurer." In enacting a depository statute requiring security, the legislature recognized the public character of the deposits in question, although they might include sums which would ultimately become payable to private litigants.

Specifically answering your question, it is my opinion that under the Act of June 25, 1930, c. 604, 46 Stat. 809 (12 U. S. C. A. Sec. 90), a national bank can legally secure deposits made under Sections 2288-1c, et seq., General Code, by the clerk or bailiff of a municipal court, although such deposits may include money received in payment of judgments and other funds which will subsequently be disbursed to private individuals or business associations.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4646.

WEEDS—DUTY OF OCCUPANT OF LAND TO CUT WEEDS—TOWNSHIP TRUSTEES MAY ASSESS COST AGAINST LANDOWNER WHEN.

SYLLABUS:

1. *It is the duty of the owner, lessee, agent or tenant having charge of*