OPINION NO. 83-008

Syllabus:

The State Board of Deposit has the authority to deposit active funds of the State in a depository, otherwise qualified to receive state funds, but having only a branch office located within the limits of the city of Columbus. In such a situation, the deposit base and asset limits prescribed in R.C. 135.03 apply to the financial institution itself rather than to the branch office in Columbus in which such state funds are deposited.

To: Mary Ellen Withrow, Chairman, State Board of Deposit, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 17, 1983

I have before me the State Board of Deposit's request for my opinion concerning public depositories. The specific questions of the State Board of Deposit are as follows:

> 1. Does the State Board of Deposit have the authority, under the law, to deposit active funds of the State of Ohio in a depository, otherwise qualified to receive state funds, but having only a branch office located within the limits of the city of Columbus?
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> 2. [If the answer to the first question is in the affirmative], should the deposit base and asset limits prescribed in Section 135.03 of the Revised Code apply only to the branch office located in Columbus or may they apply to the home office as well?

Turning to your first question, I note that R.C. 135.03 states:

> Any national bank located in this state and any bank as defined by section 1101.01 of the Revised Code, subject to inspection by the superintendent of banks, is eligible to become a public depository, subject to sections 135.01 to 135.21 of the Revised Code. No bank shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of thirty per cent of nonpublic moneys on deposit as shown in its latest report to the superintendent of banks or comptroller of the currency.
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> Any domestic building and loan association as defined in section 1151.01 of the Revised Code authorized to accept deposits is eligible to become a public depository of active deposits placed in a negotiable

> order of withdrawal account, inactive deposits, and interim deposits only, subject to sections 135.01 to 135.21 of the Revised Code. No building and loan association shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of ten per cent of its total assets, as shown in its latest report to the superintendent of building and loan associations or federal home loan bank board.

R.C. 135.04(B) provides that, "[a]ny such institution [mentioned in R.C. 135.03] having an office in Columbus is eligible to become a public depository of the active deposits of public moneys of the state." (An "active deposit" is "a public deposit payable or withdrawable, in whole or in part, on demand, or a public deposit in a negotiable order of withdrawal account as authorized in the 'Consumer Checking Account Equity Act of 1980'. . . ." R.C. 135.01(A).) The answer to your question depends on whether an institution which otherwise qualifies as a public depository, but which has only a branch office in Columbus, has an "office" in Columbus for purposes of R.C. 135.04(B), and thus would qualify as a public depository of active deposits.

A "branch" of a bank[1] is defined in R.C. 1101.01(E) as: "an office or other place

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[1] A "bank" is defined in R.C. 1101.01(B) as:

> any corporation soliciting, receiving, or accepting money or its equivalent on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, passbook, note, receipt, ledger card, or otherwise, and also includes commercial banks, savings banks, trust companies, and special plan banks, but does not include any building and loan association, credit union, or federal savings and loan association.

R.C. 1151.01 reads in part:

> In sections of the Revised Code making reference to building and loan associations and to the division of building and loan associations:
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> (A) "Building and loan association" means a corporation organized for the purpose of raising money to be loaned to its members or to others; "building and loan association" may be used interchangeably with and shall for all purposes have the same meaning as "savings and loan association" and "savings association" and "division of building and loan associations" may be used interchangeably with and shall for all purposes have the same meaning as "division of savings and loan associations."
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> (B) "Domestic association" means a building and loan association organized under the laws of this state or the "Home Owners' Loan Act of 1933," 48 Stat. 128, 12 U.S.C. 1461, and amendments thereto, the home office of which is located within this state.

A "branch office of a building and loan association" is defined as "any office other than its home or principal office as designated in its articles of incorporation, agency office, data processing or administrative office, drive-in or pedestrian office, a remote service unit or an employee facility. . . ." [1981-1982 Monthly Supp.] Ohio Admin. Code 1301:2-1-04(A) at 482. Rule 1301:2-1-04(A) also provides that, "[e]xcept as limited by this rule, any business of an association may be transacted at a branch office." For purposes of this discussion of R.C. 135.04(B), I deem the definitions of a branch office of a bank and of a building and loan association to be comparable. The following textual discussion concerning the branches and principal place of business of a bank, and my conclusion as to whether the branch of a bank is an "office" for purposes of R.C. 135.04(B), are applicable to building and loan associations.

at which a bank receives money or its equivalent from the public for deposit and conducts a general banking business, but does not include a bank's principal place of business." (Emphasis added.) (R.C. 1101.01(E) lists several locations or facilities which are not considered branches, none of which are relevant to this discussion.) See generally R.C. Chapter 1111. A bank's "principal place of business" is defined in R.C. 1101.01(T) as: "the location of the 'principal office' or 'main office' of a bank as named in its articles." From these definitions it is obvious that, as a general matter, both the principal place of business and all branches of a bank are considered "offices" of such bank.[2]

Moreover, there is no language in R.C. 135.04 which would lead me to conclude than a branch is not an "office" of a bank for purposes of that statute. There is nothing in R.C. 135.04 which indicates that a distinction exists between an "office" and a "branch." On the contrary, I have found language from which it may be implied that a branch, as well as the principal place of business, is an office of a bank. For example, R.C. 135.01(C),[3] in defining "capital funds," provides for the case where an institution has offices in more than one county. By definition, a bank cannot have more than one principal place of business. Thus, in order for the situation to arise whereby an institution would have offices in more than one county, "offices" would have to include branches. Division (H) of R.C. 135.04, dealing with the "active fund quota" and "award quota" of institutions used for the deposit of active funds of subdivisions, includes this statement: "The term 'permanent offices' as used in this division means the principal office and branches not including intermittent branches." The term "office" cannot be interpreted to exclude branches when the more restrictive term "permanent offices" includes branches which are not intermittent branches.

It is a primary rule of statutory construction that parts of a statute as well as statutes which are part of the same scheme should be construed so as to render the statute or statutes a harmonious and consistent whole, and that a construction which destroys this consistency should be avoided. See Humphrys v. Winous Co., 165 Ohio St. 45, 133 N.E.2d 780 (1956); Gough Lumber Co. v. Crawford, 124 Ohio St. 46, 176 N.E. 677 (1931); Suez Co. v. Young, 118 Ohio App. 415, 195 N.E.2d 117 (Lucas County 1963). Because the term "office" obviously includes branch offices in those portions of R.C. 135.01 and R.C. 135.04 outlined above, "office" as used in R.C. 135.04(B) must be read to include branch offices, in order to render R.C. 135.04 internally consistent, as well as consistent with other statutes which are part of the same scheme. This construction also comports with the purpose of R.C. 135.04(B), which is the idea that Columbus is the most geographically convenient location for the placement of funds by the State Board of Deposit. See 1971 Op. Att'y Gen. No. 71-016. A branch office may conduct general banking business, R.C. 1101.01(E); thus, it is not more inconvenient for the State Board of Deposit to transact business at a branch office of a bank in Columbus than it would be for the Board to transact business at the main office of a bank located in Columbus.

Accordingly, a financial institution may have only a branch office in Columbus, and be eligible to be a public depository of active deposits of the state pursuant to R.C. 135.04(B).

This conclusion is supported by State ex rel. First National Bank v. Board of Education, 4 Ohio App. 2d 258, 212 N.E.2d 80 (Lucas County 1965), aff'd, 8 Ohio St. 2d 3, 220 N.E.2d 671 (1966), wherein the court, in considering what banks were

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2 The third type of office which a bank may maintain is an "intermittent branch" which is "a branch at which a bank receives money or its equivalent for deposit on not more than three days a week at a given location, is housed in either a building or a mobile facility, and has been approved by the superintendent [of banks]. R.C. 1101.01(R).

3 R.C. 135.01 provides definitions of terms used in R.C. 135.01 through R.C. 135.21, the Uniform Depository Act. As part of the same statutory scheme, R.C. 135.01 and R.C. 135.04 must be read in pari materia, and construed as a whole. See Suez Co. v. Young, 118 Ohio App. 415, 195 N.E.2d 117 (Lucas County 1963).

eligible to be public depositories for active funds of a school district, construed the following language:

> "Any institution mentioned in Section 135.04 [now R.C. 135.03] of the Revised Code, which has an office located within the territorial limits of a subdivision other than a county is eligible to become a public depository of the active public moneys of such subdivision. Any such institution which has an office in the county seat is eligible to become a depository of the active deposits of the moneys of the county. . . ." (Emphasis by the court.)

4 Ohio App. 2d at 260, 212 N.E.2d at 82. (This language, which at the time of the decision was found in R.C. 135.06, may now be found, slightly changed, at R.C. 135.04(F).) The court concluded that "office" as used in the statute quoted above included a branch office, and a bank with only a branch office within the limits of a subdivision was entitled to be designated by the subdivision as a depository of its active deposits. The court relied upon the definition of "capital funds" found at R.C. 135.01, and noted that "the Legislature was fully cognizant of the custom prevailing in the banking business, wherein a main office of a banking institution might be located in one county or one subdivision of a county of the state and have branch banks and offices in other counties and other subdivisions of the state." 4 Ohio App. 2d at 260, 212 N.E.2d at 82. See 1960 Op. Att'y Gen. No. 1414, p. 370, 375 (although [what is now R.C. 135.04] requires an institution to have an office within the territorial limits of a subdivision in order to be eligible to become a public depository of the active deposits of the subdivision, "[t]here is no requirement that such office be the 'home office' of the bank").

In answer to the first question, the State Board of Deposit has the authority to deposit active funds of the state in a depository, otherwise qualified to receive state funds, but having only a branch office located within the limits of the city of Columbus.

I turn now to the second question concerning whether "the deposit base and asset limits prescribed in Section 135.03 of the Revised Code apply only to the branch office located in Columbus or [whether] they apply to the home office as well." The portion of R.C. 135.03 to which you refer reads:

> No bank shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of thirty per cent of nonpublic moneys on deposit as shown in its latest report to the superintendent of banks or comptroller of the currency.
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> . . .No building and loan association shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of ten per cent of its total assets, as shown in its latest report to the superintendent of building and loan associations or federal home loan bank board.

In order to respond to your question, the language of R.C. 135.03 and R.C. 135.04, two statutes which must be construed in pari materia, must be examined and compared. R.C. 135.03 sets out two types of financial institutions which are eligible to become public depositories—specifically, banks and domestic building and loan associations. R.C. 135.04(B) provides that any such institution mentioned in R.C. 135.03 (that is, a bank or building and loan association) having an office in Columbus is eligible to become a public depository of active deposits. As discussed above, an "office" for purposes of R.C. 135.04(B) means either an institution's main office or a branch office. The terms "bank," "building and loan association," "institution," and "office" each have their own distinct meanings. They are not interchangeable. This is obvious from the way these terms are used in R.C. 135.03 and R.C. 135.04, and comports with the general rule of statutory construction that different words used in a statute have different and distinct meanings. Robert V. Clapp Co. v. Fox, 124 Ohio St. 331, 178 N.E. 586 (1931); Metropolitan Securities Co. v. Warren State Bank, 117 Ohio St. 69, 158 N.E. 81 (1927).

Returning to the language of R.C. 135.03 at issue—that "[n]o bank shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of thirty per cent of nonpublic moneys on deposit [and]. . . .[n]o building and loan association shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of ten per cent of its total assets. . . . (emphasis added)—it is apparent that the deposit base for banks and asset limitation for building and loans apply to the financial institution as a whole, rather than to a particular office of the institution.

Again, it is contrary to modern banking practices to view the deposits and asset limits of a branch office as isolated from those of the main office. It has been stated that the limitations on the amount which a depository may have at any one time are based on the fact that depositories are required by (what is now) R.C. 135.18 to furnish securities covering the amount of the public deposits. 1958 Op. Att'y Gen. No. 1899, p. 188 (overruled in part by 1960 Op. Att'y Gen. No. 1202, p. 166). It is the institution, rather than a particular office, which provides the security under R.C. 135.18. Thus, it is consistent to determine that the deposit base and asset limitation under R.C. 135.03 are those of the institution as well.

In conclusion, it is my opinion, and you are advised, that the State Board of Deposit has the authority to deposit active funds of the State in a depository, otherwise qualified to receive state funds, but having only a branch office located within the limits of the city of Columbus. In such a situation, the deposit base and asset limits prescribed in R.C. 135.03 apply to the financial institution itself rather than to the branch office in Columbus in which such state funds are deposited.