

Street, and consisting of about 843 square feet of office space,  
\* \* \*

This lease has been executed by J. W. Conover and Snyder A. Smith, as officers of The Penn Mutual Life Insurance Company. I find that this lease and the provisions thereof are in proper form.

This lease is accompanied by contract encumbrance record No. 131 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rental under this lease for September, 1939. This is a sufficient compliance with the provisions of Section 2288-2, General Code.

This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1292.

TREASURER OF STATE — PLEDGE OF COLLATERAL TO  
SECURE UNEMPLOYMENT COMPENSATION FUND —  
UNEMPLOYMENT COMPENSATION ADMINISTRATION  
FUND — DISCUSSION, LEGALITY, DEPOSIT OF SUCH  
COLLATERAL.

*SYLLABUS:*

*Legality of deposit of collateral to secure unemployment funds discussed.*

COLUMBUS, OHIO, October 16, 1939.

HON. HERSCHEL C. ATKINSON, *Administrator, Bureau of Unemployment Compensation, Columbus, Ohio.*

DEAR SIR: Your recent letter requests my opinion as to the legality of the action of the Treasurer of State in obtaining the pledge of collateral to secure the unemployment compensation fund and the unemployment compensation administration fund. With your letter you enclose communications from the Social Security Board and from Paul C. Stetzberger, Assistant Treasurer of State, and also a certificate of Don H. Ebright, Treasurer of State.

Section 1345-2, General Code, creates an unemployment compensation fund and provides that the Treasurer of State shall be the custodian thereof and shall administer same in accordance with the directions of the Administrator of the Bureau of Unemployment Compensation. It is fur-

ther provided in this section that the Treasurer shall maintain within this fund three separate accounts, viz., (1) a clearing account; (2) an unemployment trust fund account; and (3) a benefit account. Moneys received by the Treasurer of State payable to the unemployment fund are to be deposited immediately in the clearing account and after clearance thereof the statute provides that they shall be immediately deposited with the Secretary of the Treasury of the United States to the credit of the account of this State in the unemployment trust fund established and maintained pursuant to Section 904 of the Social Security Act as amended. The moneys so on deposit with the Secretary of the Treasury constitute the unemployment trust fund account. The benefit account consists of moneys requisitioned from this State's account in the federal unemployment trust fund. Section 1345-2, General Code, expressly provides in part as follows:

“Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer of state, under the direction of the administrator, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund.”

Section 1345-3, General Code, creates in the State Treasury a special fund known as the unemployment compensation administration fund which consists of moneys appropriated by this State and moneys received from the United States of America for the purpose of defraying the cost of administering the Unemployment Compensation Act of this State. Section 1345-3, General Code, provides in part:

“All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury.”

In Ohio the deposit of public funds in banking institutions and title guaranty and trust companies is regulated and governed by Sections 2296-1 to 2296-24, inclusive, of the General Code, which are known as the Uniform Depository Act. Section 2296-4, General Code, provides that any national bank located in this State and any bank as defined by Section 710-2, General Code, subject to inspection by the Division of Banks, Department of Commerce, and any title guaranty and trust company subject to inspection by the Auditor of State pursuant to Section 710-171, General Code, shall be eligible to become a public depository subject to the provisions of the Uniform Depository Act. It is further provided in said section that no such institution shall have on deposit at any one time public moneys in excess of the greater of these two amounts: (1) its

capital funds as defined in the act; or (2) thirty per centum of the average of its total deposits as revealed by its reports made during the twelve months preceding the date. "Capital funds" is defined to mean the total of the par value of the outstanding common capital stock, the par value of the outstanding preferred capital stock, if any, the aggregate par value of the outstanding capital notes and debentures, if any, and the surplus.

Section 2296-15a, General Code, provides in part as follows:

"The treasurer, before making any deposit in a public depository pursuant to an award made under this act, shall require the institution designated as a public depository to pledge to and deposit with him, as security for the repayment of all public moneys to be deposited in the public depository during the period of designation pursuant to the award, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time so deposited, over and above such portion or amount thereof as shall at such time be insured by the federal deposit insurance corporation or by any other agency or instrumentality of the federal government; or the treasurer may require such institution to deposit with him surety company bonds which when executed shall be for an amount equal to the excess amount hereinbefore prescribed; excepting that, in the case of any deposit other than the initial deposit made during the period of designation, the amount, if any, of the aggregate market value of securities hereby required to be pledged and deposited, or of the surety company bonds hereby required to be deposited shall be measured by the difference, if any, between the amount of public moneys then remaining on deposit in such public depository plus the amount to be so deposited, minus such portion or amount of the aggregate as shall at the time be insured as hereinbefore provided, and the market value of such securities at the time pledged to and deposited with the treasurer, or, as the case may require, the amount of the surety company bond, or bonds, at the time deposited with the treasurer. The treasurer shall have authority to require that additional eligible securities be deposited to provide for any depreciation which may occur in the market value of any of the bonds so deposited.

The following securities shall be eligible for the purposes of this section:

Bonds or other obligations of the United States, for the payment of the principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia;

Bonds or other obligations, the payment of the principal and interest of which is guaranteed by the United States;

Farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, and amendments thereto;

Bonds, debentures and other obligations issued by national mortgage associations created under the national housing act and amendments thereto;

Bonds and other obligations of this state;

Bonds and other obligations of any county, township, school district, municipal corporation, or other legally constituted taxing subdivision of this state, which is not, at the time of such deposit, in default in the payment of principal or interest on any of its bonds or other obligations, for the payment of the principal and interest of which the full faith and credit of the issuing subdivisions are pledged;

Obligations of any school district issued pursuant to section 2293-81 or section 2293-86 of the General Code;

Bonds of other states of the United States which have not during the ten years immediately preceding the time of such deposit thereof defaulted in payments of either interest or principal on any of their bonds."

It appears from the letter of Paul C. Stetzelberger, Assistant Treasurer of State, that at the time said letter was written there was on deposit in the Huntington National Bank, Columbus, Ohio, clearing account funds in the sum of \$31,506.22, which deposit was secured by the deposit of collateral which is enumerated in the certificate of Don H. Ebright, Treasurer of State. It also appears that there was on deposit in the Central National Bank of Cleveland, Ohio, clearing account funds in the sum of \$632,079.57, which deposit was secured by the deposit of collateral which is enumerated in the certificate of Don H. Ebright, Treasurer of State. It further appears from said letter that there is on deposit in the Ohio National Bank of Columbus, Ohio, funds of the benefit account in the sum of \$997,847.63, which deposit was secured by the deposit of collateral which is enumerated in the certificate of Don H. Ebright, Treasurer of State. In the certificate of Don H. Ebright, it appears that the security deposited to secure the funds on deposit with the Huntington National Bank consists of \$100,000 of Consolidated Federal Farm Loan 3% bonds of 1945/55. It also appears from this certificate that there is on deposit with the Treasurer of State by the Central National Bank of Cleveland, Ohio, to secure the funds on deposit with it, \$1,000,000 of United States Treasury 2¾% bonds of 1951/54. The security deposited by the Ohio National Bank of Columbus, Ohio, with the Treasurer of State to secure the deposit of unemployment funds made with it, consists of the following:

- "1,351,500. United States Treasury 2% bonds of 1947.
- 25,000. Toledo City School Dist., 5% 9-1-44/45.
- 45,000. State of West Virginia Gold Bond of 1925, 4%.
- 5,000. State of West Virginia Gold Bond of 1930, 4¼%.
- 5,000. State of West Virginia Gold Bond of 1932, 4½%.
- 100,000. State of New Jersey Highway Bonds of 1927, 4¼%.
- 300,000. United States Treasury 3¾% bonds.
- 800,000. United States Treasury 1½% bonds, Ser. B-1940.
- 64,000. Findlay, Ohio, School Imp. Bonds due 9-1-40/43, 4¾%.
- 73,000. Cuyahoga County Poor Relief due 3-1-44, 2½%.
- 63,000. Cleveland City School Dist., due 6-1-43/45, 2½%.
- 50,000. Bexley Ex. Village School Dist., due 10-1-42/46, 4¾%.
- 50,000. Canton City School Dist., due 9-15-41/45, 6%.
- 77,000. State of Oklahoma Funding, due 6-30-44, 2¼%."

You will note that the collateral security deposited by the Ohio National Bank consists in part of bonds of counties of this State and school districts of this State and of bonds of other states of the United States. In order for the bonds of a county or school district of this State to be eligible as collateral security for the deposit of public funds, such county or school district must not at the time of the deposit of such security be in default for the payment of principal or interest on any of its bonds or other obligations for the payment of which the full faith and credit of such county or school district is pledged; and in order for the bonds of another state of the United States to be so eligible, such state must not have defaulted in the payment of either interest or principal on any of its bonds within ten years immediately preceding the time of the deposit of such collateral. I do not know and do not have the means of knowing whether the bonds of the counties and school districts of this State and the bonds of other states so deposited by the Ohio National Bank as collateral security meet these requirements. If they do they are eligible under the express provisions of Section 2296-15a, General Code, and if they do not they are, of course, ineligible. However, it appears that at the time that Mr. Stetzelberger's letter was written the deposit in the Ohio National Bank amounted to \$997,847.66 and that there were on deposit with the Treasurer of State to secure these funds \$1,351,500.00 in United States Treasury 2% bonds of 1947. I think it can be safely assumed that these United States Treasury bonds have a market value of at least par and it therefore appears that the deposit of the funds in question in the Ohio National Bank of Columbus, Ohio, is amply secured by the deposit with the Treasurer of State of said United States Treasury bonds.

It appears from Mr. Stetzelberger's letter that the unemployment administration fund is secured by the deposit of collateral but that the collateral is commingled with other collateral securing other funds of the

State of Ohio. Inquiry at the office of the Treasurer of State disclosed that the unemployment administration fund is commingled with other funds in the State Treasury and that the moneys so commingled are deposited in various banking institutions in the State. In this situation, it is impossible to ascertain what portion, if any, of the funds on deposit in a particular institution is unemployment administration funds. The unemployment administration fund is one of many funds in the State Treasury and the collateral deposited to secure these funds is no more available for protection of the unemployment administration fund than of other funds of the State Treasury. In order legally to secure the unemployment administration fund by the deposit of collateral, it is necessary that all funds in the State Treasury on deposit in institutions be secured by the deposit of legal collateral. It does not appear from any of the communications which you have submitted to me whether this has been done and I am therefore unable to say whether the moneys of the unemployment administration fund are properly secured. Neither does it appear whether the deposits in question are active or inactive deposits. If any of such deposits constitute inactive deposits within the meaning of Section 2296-4, General Code, it is necessary that the institution having such deposit possess the requisite capital funds or that its total deposit liabilities be sufficient.

In reviewing the file which you submitted to me, I note that it contains what purports to be a copy of Mr. Stetzelberger's letter above referred to and that this purported copy is certified by the fiscal officer of your Bureau as being a true and exact copy thereof. However, I note that Mr. Stetzelberger in his letter states that the benefit payment account has a present balance of \$997,847.66 on deposit in the Ohio National Bank which is secured by the deposit of \$3,008,500 in eligible securities, while in the purported copy of his letter the amount of money on deposit in said bank is not stated and the amount of securities is listed at \$3,008.50. Appropriate corrections should be made before this material is submitted to the Social Security Board. I have assumed in this opinion that the moneys in the clearing and benefit accounts which have been deposited by the Treasurer of State have been so deposited under your direction.

I am therefore of the opinion that the moneys of the clearing account and the benefit account of the unemployment compensation fund mentioned in the letter of Paul C. Stetzelberger, Assistant Treasurer of State, addressed to Herschel C. Atkinson, Administrator of the Bureau of Unemployment Compensation, under date of September 6, 1939, are legally secured by the deposit of eligible collateral in the amounts required by law. Insufficient data has been submitted to me on which to reach a conclusion as to whether the moneys of the unemployment administration fund on

deposit in banking institutions are legally secured and I express no opinion thereon.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1293.

BONDS—CITY OF BARBERTON, SUMMIT COUNTY, \$15,000.00.

COLUMBUS, OHIO, October 17, 1939.

*Retirement Board, Public Employes Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of the City of Barberton, Summit County,  
Ohio, \$15,000.00

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of water-works refunding bonds in the aggregate amount of \$336,000, dated June 1, 1939, and bearing interest at the rate of 5% per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1294.

BONDS—CITY OF CLEVELAND, CUYAHOGA COUNTY, \$5,000.

COLUMBUS, OHIO, October 17, 1939.

*Retirement Board, Public Employes Retirement System, Columbus, Ohio.*

GENTLEMEN :

RE: Bonds of the City of Cleveland, Cuyahoga County,  
Ohio, \$5,000.

The above purchase of bonds appears to be part of a \$500,000 series of a \$1,000,000 issue of a \$3,000,000 voted authorization of street improvement bonds of the above city dated March 1, 1919. The transcript