

2825.

SCHOOL FUNDS—BOND REQUIRED OF DEPOSITORY BANK—BOARD OF
EDUCATION NOT PERMITTED TO PAY PREMIUM ON SUCH BOND.

SYLLABUS:

A board of education is not authorized or permitted to pay the premium on a bond given by its depository bank, or to reimburse a bank for the premium paid by it on such a bond.

COLUMBUS, OHIO, January 15, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry which reads as follows:

“The First National Bank of Bellaire is the regularly established depository for the funds of Shadyside Village School District. The school district sold notes in the amount of \$170,000.00 and placed \$70,000.00 in the regular depository account and by arrangement with the bank, took certificates of deposit for \$100,000.00 drawing interest at 4%, which was a greater rate than was paid on the regular account. The board required the bank to give an additional bond so as to cover the additional deposit of \$170,000.00 as the original bond was not sufficient for amount. The bank gave a surety bond in the sum of \$170,000.00 and now asks that the board pay \$425.00, the cost to the bank of this additional bond. There was no agreement by the board of education at the time the deposit was made to pay the cost of the bond.

Question: May the board of education legally pay to the First National Bank of Bellaire the sum of \$425.00 for this purpose?”

Boards of education in all school districts are directed by Section 7604, General Code, to provide every two years by resolution for the deposit of any and all moneys coming into the hands of their treasurers. The manner of selecting the depository for said fund must be by competitive bidding, so conducted as to insure full publicity and to be open at all times to public inspection. Section 7606, General Code.

Certain limitations are fixed by statute on the amount that may be deposited in any one bank and certain restrictions are placed on the several boards of education with respect to the location of a bank which may be designated as a public depository for their districts. Section 7604, 7605 and 7607, General Code. These restrictions and limitations are not material to your inquiry.

It is imperative, however, that a bank designated as a depository of school moneys when qualified in other respects, be the bank offering upon competitive bidding, the highest rate of interest which shall not be less than 2% for the full time the funds or any part of them are on deposit. Sections 7605, and 7607, General Code.

It is also imperative, as provided by said Sections 7605 and 7607, General Code, that the bank designated by resolution of a board of education, after competitive bidding to be the district depository for a two year period, furnish proper and adequate security for the said funds deposited therein. The language of Section 7605, General Code, with respect to the security to be furnished by a duly designated depository bank in a district containing two or more banks, is as follows:

“Such bank or banks shall give a good and sufficient bond, or other interest bearing obligations of the United States or those for the payment of

principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of the state of Ohio, or county, municipal, township or school bonds issued by the authority of the state of Ohio, or notes issued under authority of law by any county, township, school district, road district or municipal corporation of this state, or farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto, at the option of the board of education, in a sum not less than the amount deposited."

Substantially the same language is used in Section 7607, General Code, with respect to the security to be furnished by a duly designated school depository bank in a school district containing less than two banks.

The language of these two sections respecting the security to be furnished, although somewhat ambiguous, has been construed in a former opinion of this office to mean that a bond may be given or the classes of securities named in the statute be deposited. Opinions of the Attorney General for 1927, page 2164. The first branch of the syllabus of this aforesaid opinion reads as follows:

"When a board of education designates a bank or banks as depositories for the funds of the school district, such bank or banks may at the option of the board of education secure the deposits of public funds by the giving of a good and sufficient bond or the deposit of the classes of securities enumerated in Sections 7605 and 7607, General Code, as amended by the 87th General Assembly."

It has also been held that in addition to the securities enumerated in Sections 7605 and 7607, General Code, first mortgages or bonds secured by first mortgages may be deposited as security for funds deposited in any public depository, in accordance with Section 2288-1, General Code. See Opinions of the Attorney General for 1928, page 1868.

It will be observed from the plain language of the statute quoted above, that the depository bank is to furnish the security for deposits received by it either by the giving of a bond or the deposit of certain classes of securities. If the bank chooses to give a bond instead of depositing securities it must necessarily bear the expense of the bond unless some provision of law directs or permits the payment of the cost of such bond from public funds. I find no statute that will bear such a construction.

It is a familiar principle of law that boards of education are limited in their powers and are not permitted to expend public funds unless expressly authorized to do so or unless such expenditure is necessary in order to carry out powers expressly granted. While boards of education are expressly charged with the duty of providing a public depository they are as well expressly charged with the duty of providing that depository in the manner fixed by statute, that is, after competitive bidding, the bank to be selected as the depository is to be the one offering the highest rate of interest, not less than 2%, and securing the deposits in the manner provided by law. This clearly does not authorize the board of education to furnish the security but makes it imperative upon the bank desiring to become the depository to furnish the security as stated above.

I am therefore of the opinion, in specific answer to your question, that the board of education referred to in your inquiry is not authorized to pay the premium on the bond in question or to reimburse the First National Bank of Bellaire for the premium paid by it on its depository bond.

Respectfully,
GILBERT BETTMAN,
Attorney General.