

not, operate as an estoppel to assert any defense which might otherwise exist. I do not desire to be understood as implying that such acts amounted to a violation of the depositary agreement, but if so construed the act of the bank would operate as a consent thereto, or an alteration by mutual agreement. I am therefore of the opinion that your third inquiry should be answered in the negative.

Specifically answering your inquiries, it is my opinion that:

1. A board of county commissioners has no authority to accept real estate mortgages on property located outside of Ohio either as the whole security for county deposits in a depositary or in conjunction with an undertaking pursuant to the provisions of Section 2733, General Code, as partial security therefor.

2. Section 2733, General Code, which authorizes the acceptance by the board of county commissioners as security for a county depositary of securities in part, and an undertaking in part, only authorizes such board to accept securities of the types specified in Sections 2732, 2288-1 and 4295, General Code.

3. When, after the banking holiday of March, 1933, the sureties on a county depositary bond re-acknowledge their obligation thereon and at the same time the depositary bank deposits securities as additional securities for the purpose of remaining qualified to act as a county depositary, such bank cannot thereafter set up such acts as a ground for the rescission of the depositary agreement.

Respectfully,

JOHN W. BRICKER,
Attorney General.

982.

TOWNSHIP TRUSTEES—MAY ACCEPT SECURITIES ISSUED BY SUCH TOWNSHIP IN SUBSTITUTION OF SECURITIES DEPOSITED WITH THEM AS SECURITY FOR TOWNSHIP DEPOSITARY—DISCUSSION OF LIMITATIONS ON SUCH SUBSTITUTION.

SYLLABUS:

1. *The board of trustees of a township may, by virtue of the provisions of Section 4295, General Code, accept securities of the types therein defined, including securities issued by such township, in substitution of other securities theretofore deposited with them as security for a township depositary, if the bank or its conservator offers them, when in the opinion of the board of township trustees the interests of the township are not prejudiced thereby.*

2. *The board of township trustees, with which, as security for a township depositary, bonds of such township have been deposited, may not enter into an agreement to accept such securities not yet due, in payment of the funds on deposit with such depositary, except to the extent that the moneys in such depositary are funds of a township sinking fund, since such transaction would be tantamount to a purchase of such securities, and is beyond the power granted by the board.*

COLUMBUS, OHIO, June 21, 1933.

HON. S. L. CHENEY, *Prosecuting Attorney, Geauga County, Chardon, Ohio.*

DEAR SIR:—Your recent request for opinion reads as follows:

“The Trustees of Russell Township in Geauga County have on deposit in The C. Bank, which bank is under the supervision of a con-

servator, \$12,393.48 in impounded account and \$476.89 in segregated account. Under their depository agreement they hold two mortgages in the aggregate amount of \$12,200.00.

The conservator has by letter offered the Trustees of Russell Township to exchange the mortgages, now pledged, for \$12,000 in bonds of said Russell Township, consisting of various denominations and maturities. The first maturity offered is October 1, 1933. The other maturities are likewise on October 1st in subsequent years. The bonds offered are of four road improvement issues, all within said Township.

Upon exchange of said collateral the conservator wants to adjust the accrued interest on the deposited funds and upon the bonds and by such exchange and adjustment close out the impounded balance. In the instant case the position of the Trustees would be, in my opinion, improved by at least accepting their own securities as pledged collateral.

The Trustees have asked me to obtain from you your opinion on the following:

(1) Can the Trustees of a Township release security held by them under a depository contract for deposit of public funds and accept in place thereof securities issued by and an obligation of their said Township, which securities bear future maturity dates?

(2) Can the Trustees of a Township who hold as security for deposit of public funds, their own obligations which bear future maturities, enter into a settlement with the conservator of an unlicensed state bank which is a member of the Federal Reserve System, and accept said unmatured securities and accrued interest thereon at par, as payment of their impounded balance on deposit with said bank, together with accrued interest on the deposit, and by such settlement terminate the depository contract and release the bank?

(3) Provided such a settlement can be made with the conservator of a depository, should the Trustees hold said unmatured securities as an investment of the various fund accounts represented by such present impounded balance until paid at maturity from their sinking fund account?

(4) Can such Trustees sell said bonds so acquired or hypothecate them from time to time to borrow money?

If ruling has been made on the above questions please furnish me copies of the same."

Your inquiries necessitate an interpretation of the township depository laws, which are Sections 3320 to 3326, General Code. These sections do not specifically authorize the acceptance of any other type of security from township depositories than "a good and sufficient bond to be approved by the township trustees" (§ 3322, G. C.) nor do they contain any specific provision authorizing a change of or substitution of security for such funds. In the enactment of Section 4295, General Code, the legislature in defining the securities which may be accepted by a municipality, has provided that like types of securities may also be accepted by other political subdivisions of the state as security for deposits in depositories "in addition to such other securities as are prescribed by law."

A former Attorney General held that this section authorized township trustees to accept the types of securities mentioned therein as security from a depository (1 O. A. G. 1928, p. 108). However herein I am rendering no opinion either as to whether the board of township trustees could accept from depositories

mortgages as security for such deposits. For the purposes of this opinion, I assume, but without so holding, that the mortgages now held by the township as security were properly pledged.

When securities are pledged by a depositary as security for public deposits the legal title to such securities conditionally passes to the subdivision for one purpose only; that is, such title passes to the subdivision as will enable the subdivision to vest good title in the purchaser, in the event that a default occurs in the depositary agreement, and the depositor elects to have recourse to the securities to recoup its loss. However, it is not compulsory that the depositor elect to pursue such remedy; it might rather elect to sue the depositary and after judgment, levy on other assets of such judgment creditor. As I have above pointed out, only a conditional or defeasible title to the securities passes to the pledgee, if all the conditions of the depositary agreement are fully performed by the bank, or if any loss occasioned by its default is satisfied from other sources, the title thereto vests in the bank or pledgor.

The evident purpose of the legislature in the enactment of the provisions of the statute requiring the deposit of public funds to be secured, is to insure the safekeeping and return of public funds rather than to give the subdivision a specific lien on any particular assets of the bank. It appears to me that unless the legislature did, by implication, intend to authorize the substitution of collateral, a situation might arise that would defeat the evident purpose of the statute; for instance, securities may be deposited by the depositary which, at the time, constitute ample security, but later become of little or doubtful value, by reason of causes beyond the knowledge or contemplation of any of the parties. Or, it might well be that certain of the securities would become payable and would be presented for payment and if paid would be changed into cash which must also be deposited in the depositary.

Since the purpose of the statutory requirement is to protect the deposits of the subdivision rather than the acquisition of a specific lien, it would appear that the board of township trustees has the implied authority to release securities deposited with it and accept in lieu thereof other securities which comply with the requirement of the statutes, if such substitution is advantageous for the subdivision.

Your first inquiry is as to whether the substituted securities may be the obligations of the township which is to become the pledgee of such securities. Section 4295, General Code, authorizes the township to accept the "legally issued bonds of any * * township * * as to which there has been no default of principal, interest or coupons, and which in the opinion of the treasurer are good and collectible providing the issuing body politic has not defaulted at any time since the year 1900, in the payment of the principal and interest of any of its bonds; notes issued under authority of law by any * * township * * of this state * * in a sum not less than ten percent in excess of the maximum amount at any time to be deposited."

In order to hold that such subdivision could not accept its own securities of the type mentioned in such section as security, it would be necessary to insert the word "other" before the word "township" in such section. There is a well settled presumption concerning the interpretation of statutes, that the legislature is presumed to have inserted all the language in a statute which it deemed necessary to carry out its purpose, for which reason a court is unwarranted in adding words to or omitting words from a statute unless from the other language of the statute and the purpose of the act it clearly appears such omission or re-

dundance was an oversight. *Woodbury vs. Berry*, 18 O. S. 456; *Savings & Trust Co. vs. Schneider*, 25 O. App. 259; *State ex rel. Spira vs. Bd. of Co. Commissioners*, 32 O. App. 382; *Stanton vs. Realty Co.*, 117 O. S. 345.

As stated by Marshall, C. J., in *Stanton vs. Realty Co.*, *supra*, at page 349:

"It is a general rule of interpretation of statutes that the intention of the Legislature must be determined from the language employed, and, where the meaning is clear, the courts have no right to insert words not used, or to omit words used, in order to arrive at a supposed legislative intent, or where it is possible to carry the provisions of the statute into effect according to its letter."

It would thus appear that your first inquiry should be answered in the affirmative, providing the depository is a depository in fact and not a former depository in liquidation.

Your second inquiry assumes that the depository bank is in the hands of a conservator as distinguished from a liquidator; and is, whether when the township which holds, as security for the return of township funds deposited in a depository, certain township bonds issued by the depositing township, but owned by the depository bank, may enter into an agreement with the conservator to accept a transfer of the legal title to such securities as a payment of, or in lieu of a return of the funds on deposit and release the depository bank from liability under the depository agreement.

A township is a body politic and corporate, but as such, is only a quasi corporation. *Lane vs. State*, 39 O. S. 314; *Brattleboro Sav. Bk. vs. Trustees*, 13 O. F. D. 322, 98 Fed. 524; *Trustees vs. Columbus*, 12 O. Dec. 527; Section 3244 General Code. However, as stated by Gilmore, J., in the case of *Trustees of London Township vs. Miner*, 26 O. S. 452, 456:

"It is settled that neither the township nor its trustees are invested with the general powers of a corporation; and hence the trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, in order to enable them to perform the duties imposed upon them."

Since the township is a quasi corporation, having only those powers conferred by statute, it is necessary to examine the provisions of the statute in order to determine the extent of such powers. Section 3244, General Code, which sets forth the general powers of a township, reads:

"Each civil township lawfully laid off and designated, is declared to be, and is hereby constituted, a body politic and corporate, for the purpose of enjoying and exercising the rights and privileges conferred upon it by law. It shall be capable of suing and being sued, pleading and being impleaded, and of receiving and holding real estate by devise or deed, or personal property for the benefit of the township for any useful purpose. The trustees of the township shall hold such property in trust for the township for the purpose specified in the devise, bequest, or deed of gift. They may also receive any conveyance of real estate to the township when necessary to secure or pay a debt or claim due

the township, and may sell and convey real estate so received, and the proceeds of such sale shall be applied to the fund to which such debt or claim belonged."

Section 3260, General Code, grants power to the trustees of a township to acquire certain lands for township purposes. Sections 3276 and 3277, General Code, provide for the payment of judgments against a township.

There are many other sections of the statute granting to township trustees specific authority to perform certain acts, none of which are applicable to the facts presented in your inquiry. I have failed to find any specific provision of statute which would grant express power to the board of trustees to compromise or settle a liquidated claim such as presented in your inquiry.

In the case of *State for the use of Monroe Township vs. Williams*, 13 Oh. 495, the question was presented as to whether the township trustees had the right to release a township treasurer from part of his liability arising out of his loss of some school funds in his possession. It was urged that such right on the part of the trustees was inferred from the express grant of power to sue and be sued. The court stated at page 505 of its opinion that:

"A discharge by them of the bond, or of any demand which it was intended to secure, is a perfect nullity, because the power has not been granted to them expressly, and cannot be taken by implication, as incidental to any expressly granted power."

Such language has been cited in some digests as holding that the township trustees have no authority to settle a claim in favor of a township.

However, a reading of this case discloses that the statute authorizing the deposit of funds belonging to a township board of education, with the township, made the township treasurer the custodian of such funds as distinguished from the township. The reasoning of the court is that the township trustees have no jurisdiction over the funds and therefore none concerning the loss arising therefrom. It is thus evident that such opinion has no bearing on the question involved, since no claim of the township was involved. The township trustees in that case were interlopers in the transaction.

The general rule as to the right of a public or general corporation to compromise claims or judgments is aptly stated in a note appearing in 19 L. R. A. (N. S.) 320, as follows:

"The right of a public corporation to compromise claims or judgments in its favor is usually sustained in the absence of fraud or collusion, unless the compromise is made for the purpose of making a gift or donation to the other party thereto, rather than for purposes which, as to private individuals, are recognized as lawful and valid objects for compromise or settlement."

The cases are quite clear that the quasi corporation may not through the guise of a compromise make a gift of property of the subdivision. Thus, it is generally held that in the absence of express statutory authority the county commissioners may not release a county treasurer by reason of his loss of county funds. *Jefferson County vs. Lineberger*, 3 Mont. 231; *Bland vs. Orr*, 90 Tex. 492; *Commissioners vs. Tilton*, 111 Ky. 341; *Zuelly vs. Casper*, 37 Ind. App. In other

words, there must be a "valuable" or legal consideration for the release. "Valuable consideration" is defined as "either some right, interest, profit, or benefit, accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered, or undertaken by the other." 1 Page on Contracts, § 514. See also *Wright vs. Snell*, 22 O. C. C. 86, and *Dalrymple vs. Wyker*, 60 O. S. 108.

It is stated generally in the text books that the courts will not inquire into the amount of consideration if there, in fact, is a valuable consideration. It has likewise been held generally that a change in the time of payment (1 Page on Contracts, § 598 and cases cited) or a change in the medium of payment constitute valuable consideration (1 Page on Contracts, § 600 and cases cited). In the case presented by your inquiry, I am unable to state that a benefit would not accrue to the subdivision if it were to make the settlement in question. However, in Section 5, Article X of the Ohio Constitution, there is an express constitutional limitation upon the expenditure of funds derived from taxation. Such section reads:

"No money shall be drawn from any county or township treasury, except by authority of law."

In the "Budget Act" (§ 5625 et seq. G. C.) there is also a statutory restriction on the use of the funds of a subdivision. Thus, section 5625-9, General Code, provides for the creation of a fund for each of the special purposes for which taxes are levied. Section 5625-10, General Code, provides that the revenue derived from taxes levied shall be placed in the fund for which levied and contains the following language:

"Money paid into any fund shall be used only for the purposes for which such fund is established."

Thus, in section 5625-13, General Code, there are specific limitations against the transfer from one fund to another, with specific provision that transfers of moneys from one fund to another can be made only in the manner therein provided. You do not state to what fund the moneys deposited in the depository belong. If they are general funds they may be expended for the purposes for which the general fund has been established. If they are moneys for the construction and maintenance of highways, they may only be used for such purpose. See Section 5625-10, General Code. If, however, they belong to a sinking fund they may be invested in bonds of the subdivision (see Sections 2293-27 and 2295-14, G. C.). I do not find any provision authorizing the investment of the bond retirement fund.

Inasmuch as the proposition of settlement suggested by your second inquiry is tantamount to a receipt of the moneys on deposit and a purchase of the township bonds owned by the bank, it would appear that such settlement is beyond the powers of the board of township trustees, except to the extent that such settlement can be accomplished by that portion of the funds on deposit which belong to a sinking fund.

Your third inquiry is somewhat limited by reason of the foregoing conclusions. However, with reference to that portion of the bonds which may be acquired by the trustees or commissioners of a sinking fund (in the event that such fund exists in your township), specific authority is granted by statute to such body to purchase and re-sell securities. See sections 2293-27 and 2295-14, General Code.

Specifically answering your inquiries, it is my opinion that:

1. The board of trustees of a township may, by virtue of the provisions of Section 4295, General Code, accept securities of the type therein defined, including securities issued by such township in substitution of other securities theretofore deposited with them as security for a township depository, if the bank or its conservator offers them, when in the opinion of the board of township trustees the interests of the township are not prejudiced thereby.

2. The board of township trustees, with which, as security for a township depository, bonds of such township have been deposited, may not enter into an agreement to accept such securities not yet due, in payment of the funds on deposit with such depository, except to the extent that the moneys in such depository are funds of a township sinking fund, since such transaction would be tantamount to a purchase of such securities, and is beyond the power granted to the board.

Respectfully,

JOHN W. BRICKER,
Attorney General.

983.

SCHOOL DISTRICT—TRANSFER OF TERRITORY BY COUNTY COMMISSIONERS—EQUITABLE DIVISION OF FUNDS INVOLVED—INDEBTEDNESS ASSUMED UPON TRANSFER BECOMES LIABILITY OF ENTIRE DISTRICT TO WHICH TRANSFER MADE—UNIFORMITY OF TAX LEVIES REQUIRED.

SYLLABUS:

1. *It is the duty of county boards of education upon transferring territory from one school district to another, by authority of either section 4692 or section 4696, General Code, to make an equitable division of the funds and of the indebtedness of the districts involved in the transfer.*

2. *That part of the indebtedness of a school district from which territory is transferred, which the county board of education in the exercise of its discretion determines shall be assumed by the school district to which the territory is annexed, will become an indebtedness of the entire district to which the territory is transferred, and not merely an indebtedness of the transferred territory.*

3. *Tax levies must be uniform throughout an entire taxing subdivision.*

COLUMBUS, OHIO, June 21, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt from you of the following communication:

“A rural board of education has written me regarding the following situation and I am in turn referring it to you for an opinion:

‘In both District A and B, new school buildings have been built within the past five years. A part of District A had petitioned to be set over into District B prior to the erection of the building in District A. The petition was practically unanimous, but through an error in the wording of the petition, said petition was thrown out and before a cor-