

It is stated in *State ex rel. Stellar vs. Zangerle*, 100 O. S. 414 at p. 414:

"A special statute covering a particular subject matter must be read as an exception to a statute covering the same and other subjects in general terms."

Consequently, it is my opinion that municipally owned and operated hospitals, assuming they are entitled to reimbursement under House Bill No. 80, as outlined in my answer to your first inquiry, may receive per diem reimbursement under House Bill No. 80, for the care of indigents suffering motor vehicle injuries even though such patients had their legal settlements within the city owning and operating such hospitals. House Bill No. 80 supersedes the general statutes in so far as the statutes are inconsistent inasmuch as the later statute in point of time would prevail. However, I do not hold that the city may no longer provide for the care of indigents, legally settled in such city, injured in motor vehicle accidents.

Specifically answering your inquiries, it is my opinion that:

1. The definition of a hospital contained in Section 1 of House Bill No. 80, 115 O. L. 482, includes municipally owned and operated hospitals if they are registered with the Department of Health of the State of Ohio and if they receive and care for patients suffering from motor vehicle injuries.

2. Municipally owned and operated hospitals which are entitled to the benefits of House Bill No. 80, 115 O. L. 482, may be reimbursed for per diem care of indigents suffering motor vehicle injuries even though such indigents had their legal settlement within the confines of the city owning and operating such hospital.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2515.

BOARD OF EDUCATION—DEPOSITORY CONTRACT AWARDED WHEN LESS THAN TWO BANKS IN SCHOOL DISTRICT—DISCUSSION OF "CONVENIENTLY LOCATED" AND "HIGHEST RATE OF INTEREST" UNDER SECTION 7607, GENERAL CODE.

SYLLABUS:

1. *Under Section 7607, General Code, it is within the discretion of boards of education to determine the territory within which banks are "conveniently located."*

2. *Under said section boards of education may provide by resolution for competitive bidding for school funds by all banks "conveniently located," in which event the depository contract must be awarded to the bank or banks offering the highest rate of interest and proper security.*

3. *In the absence of such resolution competitive bidding is not necessary under Section 7607, General Code, in order for the board to determine the bank or banks offering "the highest rate of interest."*

4. *Under said section all banks "conveniently located" must be given an opportunity to advise the board as to the amount of interest which they are willing to pay, the manner of notifying such banks being within the discretion of the board.*

COLUMBUS, OHIO, April 16, 1934.

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

GENTLEMEN:—I have your request for my opinion which reads as follows:

“Referring to the second branch of the syllabus of your Opinion No. 1895, dated November 21, 1933, addressed to I. J. Fulton, Superintendent of Banks, we note it is held that the board of education of a school district which contains less than two banks is prohibited, by Section 4757 of the General Code, from entering into a depository contract with a bank of which one or more members of the board of education are stockholders or directors, since Section 7607 of the General Code which authorizes the creation of a depository does not provide for competitive bidding.

Section 7607 of the General Code provides that in all school districts containing less than two banks, after adoption of a resolution providing for the deposit of its funds, a board of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest for the full time the funds or any part thereof are on deposit.

QUESTION: How is a board of education to determine the bank offering the highest rate of interest unless it receives bids from the banks that are conveniently located?

It has always been the construction of this department that in order to procure the highest rate of interest, boards of education should, under this section, receive bids.”

Section 7604, General Code, provides that boards of education shall by resolution provide for the deposit of school funds. Section 7605 reads, in part:

“In school districts containing two or more banks such deposit shall be made in the bank or banks, situated therein, that *at competitive bidding* offer the highest rate of interest for the full time the funds or any part thereof are on deposit. * * *” (Italics the writer’s.)

Section 7606, General Code, reads:

“The board shall determine in such resolution the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the authority herein given. All proceedings in connection with such competitive bidding and deposit of moneys must be so conducted as to insure full publicity and shall be open at all times to public inspection. If in the opinion of a board of education there has been any collusion between the bidders, it may reject any or all bids and arrange for the deposit of funds in a bank or banks without the district as hereinafter provided for in districts not having two or more banks located therein.”

Section 7607 reads in part:

“In all school districts containing less than two banks, after the adoption of a resolution providing for the deposit of its funds, the board

of education may enter into a contract with one or more banks that are conveniently located and offer the highest rate of interest, for the full time the funds or any part thereof are on deposit. * * *

Section 7608 is as follows:

“The resolution and contract in the next four preceding sections provided for, shall set forth fully all details necessary to carry into effect the authority therein given. All proceedings connected with the adoption of such resolution and the making of such contract must be conducted in such a manner as to insure full publicity and shall be open at all times to public inspection.”

It should be noted that Sections 7605 and 7606 relate to school districts containing two or more banks, while Section 7607 applies only to school districts containing no banks or one bank. Section 7604, concerning the resolution, and Section 7608, requiring full publicity of proceedings connected with its adoption and with the making of the contract, both apply to all school districts.

In a former opinion of this office, reported in Annual Report of the Attorney General, 1910-1911, p. 788, it was held, as disclosed by the syllabus:

“Boards of education may determine, by resolution, the territory within which banks are ‘conveniently located’ for the deposit of their funds. Such discretion must be reasonably exercised. *Boards must obtain bids from all banks within the territory so designated by them. Boards can not exclude banks within such territory from bidding for their funds.*” (Italics the writer’s.)

The following language appears in the body of the opinion at pp. 788-789:

“I am of the opinion, under the above quoted provisions of Sections 7607 and 7608 of the General Code that boards of education should, at the time of the adoption of the resolution providing for the deposit of the funds of their school district, determine what banks are ‘conveniently located’ for the deposit of such funds, and should designate in such resolution the territory within which they deem banks to be conveniently located for the purpose of such deposit. I do not wish to be understood, however, in this particular to hold that boards of education may arbitrarily decide as to such convenience of location; their discretion in this particular must, of course, be reasonably exercised.

I am further of the opinion that upon such determination and the passage of such resolution, the board of education should obtain bids from all banks located in the territory so designated by them. This may be done by advertisement and by sending notices to all such banks. It would seem clear from the above quoted provisions of the General Code, and I am of the opinion, that the legislature intended such deposit of funds to be made only after the fullest of competition between the banks ‘conveniently located’ as to the school district, the funds of which are to be deposited, and, therefore, a board of education could not designate in such resolution particular banks in a certain territory to be ‘conveniently located’ to the exclusion of other banks in the same territory. In other words, all of the proceedings in regard to the depositing of school

funds by boards of education must be carried out with the utmost fairness and publicity with the view to obtaining the highest rate of interest possible on such funds."

It should be noted that this opinion is based largely upon the requirement of full publicity contained in Section 7608, General Code. No mention is made of the distinction between the statutory provisions relating to banks in districts containing two or more banks and those in districts containing less than two.

In another opinion of this office, reported in Opinions of the Attorney General, 1915, Vol. I, p. 936, it was held as appears from the syllabus:

"The board of education of a school district in which but one bank is located, *having determined by resolution* to invite bids from the several banks in the county, including the bank located in said district, should let the contract for the deposit of its funds to the bank or banks offering the highest rate of interest for the full time the funds, or any part thereof, are on deposit." (Italics the writer's.)

The following language appears in the body of that opinion at pp. 936-937:

"It will be observed that this section does not, by its terms, *require* the board of education of a school district, containing less than two banks, to advertise for bids in letting the contract for the deposit of its school funds. Said section authorizes said board of education to enter into a contract with any bank or banks, conveniently located, which offer the highest rate of interest, not less than two per cent., for the full time the funds or any part thereof are on deposit, and which qualify in the manner provided in said section.

The procedure of the board of education of a school district under section 7607, G. C., differs from that required by section 7605, G. C., * * *.

Under this section the board of education has no discretion except to determine the sufficiency of the security offered by the successful bidder.

It does not follow, however, that a board of education proceeding under section 7607, G. C., may not *in its discretion* advertise for bids in letting the contract for the deposit of its funds." (Italics in last paragraph the writer's.)

In spite of this language to the effect that under Section 7607, General Code, competitive bidding is discretionary with the board of education, the 1910 opinion, *supra*, is cited with approval.

I desire also to call your attention to an opinion of this office reported in Opinions of the Attorney General, 1918, Vol. I, p. 402, the syllabus of which reads in part:

"It is within the discretion of the board of education to determine when banks are 'conveniently located' within the meaning of section 7607 General Code, and the bureau of inspection and supervision of public offices cannot control such discretion, except in case of fraud, collusion, or clear abuse of such discretion.

The phrase 'conveniently located' as used in section 7607 General Code, cannot be defined so as to apply to all cases. It should be considered in connection with the particular circumstances of each case."

The question of competitive bidding was not discussed in this opinion.

In your letter you refer to Opinion No. 1895, rendered by me November 21, 1933. One of the questions considered in that opinion was whether a board of education of a school district having less than two banks could legally enter into a contract for the deposit of school funds with a bank having upon its board of directors one or more members of such board of education, in view of Section 4757, General Code, which forbids a member of a board of education from having directly or indirectly any pecuniary interest in any contract of the board. My answer to that question was thus stated in the second branch of the syllabus:

“The board of education of a school district containing less than two banks is prohibited by Section 4757, General Code, from entering into a depository contract with a bank of which one or more members of the board are stockholders and directors, since Section 7607, General Code, authorizing the creation of such depository, does not provide for competitive bidding.”

It has been held in an opinion reported in the Annual Report of the Attorney General, 1906, p. 287, that the statutory provision now contained in Section 4757, General Code, had no application to a contract made pursuant to Sections 7605 and 7606, General Code, because those sections provide a procedure for competitive bidding among all the banks in the district and require the award to be made to the bank offering the highest rate of interest. In other words under those sections there is no discretion given to the board which might be abused by members having a financial interest in bidding banks.

My former opinion was based upon an opinion reported in Annual Report of the Attorney General, 1912, Vol. I, p. 254, the syllabus of which reads:

“The deposit of a board of education of a village district wherewith there is no bank, is governed by Section 7607, General Code, which provides for a contract by the board with a conveniently located bank offering the highest interest. Such a contract is within Section 4757, General Code, and when made by the board, with a bank whercof a member of the board is both a stockholder and a director, it is therefore, void.”

In the body of this opinion the 1906 opinion, *supra*, was distinguished on the ground that Section 7607, General Code, required no competitive bidding.

In Opinion No. 2363, rendered by me under date of March 13, 1934, it was held, as appears from the first branch of the syllabus:

“In a school district containing less than two banks it is not necessary for the board of education, when selecting a depository for the public funds of the district, to advertise and receive competitive bids therefor. After adopting a proper resolution, as provided by Section 7607, General Code, the board of education may enter into a depository contract with one or more banks that are conveniently located, that offer the highest rate of interest for the full time the funds or any part thereof are on deposit.”

The following language is contained in the body of the opinion:

“Section 7605, General Code, which relates to the selection of a depository by boards of education in school districts in which two or

more banks are located, provides that the bank or banks which may be selected as the depository for the school funds of a school district shall be the bank or banks situated in the district 'that at competitive bidding offer the highest rate of interest for the full time the funds or any part thereof are on deposit.'

Section 7606, General Code, provides that the board shall determine the method by which bids shall be received, the authority which is to receive them, the time for which such deposits shall be made and all details for carrying into effect the provisions of law providing for the selection of a depository.

It will be observed that Section 7607, General Code, makes no provision whatever for competitive bidding. It provides merely that a contract may be entered into for the deposit of the school funds with 'one or more banks that are conveniently located, that offer the highest rate of interest.' *If there is more than one bank 'conveniently located,' some effort should be made to determine which one offers the highest rate of interest but formal advertising for bids and the receipt of formal bids are not necessary.* Of course, if there is one bank, only, that is conveniently located, the receiving of bids would be futile as there could not be competition. The determination of whether or not a certain bank is conveniently located is purely within the discretion of the board of education concerned. See Opinions of the Attorney General for 1918, page 402; Opinion No. 194, rendered under date of March 7, 1933." (Italics the writer's.)

It is clear that under Section 7607, the determination of the banks "conveniently located" is entirely within the discretion of the board of education, and its determination of that fact can be successfully questioned only if there has been an abuse of discretion. Under the section in question the board must ascertain which of these "conveniently located" banks offers the highest rate of interest. The statute is silent upon the procedure to be followed in making this ascertainment. It does not make provision for advertising for bids nor does it contain a requirement that eligible banks compete for the funds. If the legislature had intended to require competitive bidding it could easily have done so by apt language as it did with respect to funds of districts containing two or more banks. For these reasons, which served as the basis for my former opinions referred to above, I cannot accept the conclusion of the 1910 opinion, *supra*. However, I am in accord with the 1915 opinion, *supra*, to the effect that the board may provide for competitive bidding in the resolution authorized by Section 7604, General Code. If competitive bidding is so authorized the contract must be awarded to the bank or banks offering the highest rate of interest and proper security.

In order to ascertain the bank offering the highest rate of interest the board must notify all banks "conveniently located" in order that they may be given an opportunity to advise the board as to the amount of interest which they are willing to pay. As provided in Section 7607, the contract must be awarded to the bank or banks offering the highest rate of interest. The exact manner of notifying the eligible banks is discretionary with the board.

In the light of the foregoing, it is my opinion that:

1. Under Section 7607, General Code, it is within the discretion of boards of education to determine the territory within which banks are "conveniently located."

2. Under said section boards of education may provide by resolution for competitive bidding for school funds by all banks "conveniently located," in which event the depository contract must be awarded to the bank or banks offering the highest rate of interest and proper security.

3. In the absence of such resolution competitive bidding is not necessary under Section 7607, General Code, in order for the board to determine the bank or banks offering "the highest rate of interest."

4. Under said section all banks "conveniently located" must be given an opportunity to advise the board as to the amount of interest which they are willing to pay, the manner of notifying such banks being within the discretion of the board.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2516.

LIBRARY—EXTENDING BENEFITS OF LIBRARY SERVICE TO INHABITANTS OF COUNTIES IN WHICH PORTIONS OF SCHOOL DISTRICT LIE—PARTICIPATION IN DISTRIBUTION OF CLASSIFIED PROPERTY TAXES.

SYLLABUS:

1. *A board of trustees of a school district library in a school district, portions of which lie in more than one county, may in its discretion, adopt appropriate rules and regulations extending the benefits of the library service of such library to the inhabitants of each of the counties in which portions of the school district lie and thereby become qualified for participation in the proceeds of classified property taxes collected in each of the said counties.*

2. *A board of trustees of a school district library may not participate in the distribution of the classified property taxes collected within the county in which the school district or any portion thereof lies, unless the library service is extended to all the inhabitants of such county by appropriate rules and regulations adopted by the said board of trustees in pursuance of Section 5625-20, of the General Code.*

3. *Where the board of trustees of a school district library in a school district, portions of which lie in more than one county, extends library service afforded by said library to the inhabitants of each of the counties in which a portion of the school district lies, in pursuance of Section 5625-20, General Code, and thus becomes qualified to share in the proceeds of classified property taxes collected in each of the said counties, the proportionate amount of the requirements of said school district library which should be contributed by each of the said counties involved should be based upon the comparative benefits accruing to each county as determined by the extent of library service afforded to the inhabitants of the respective counties.*

COLUMBUS, OHIO, April 16, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion concerning the following: