

termining the amount which a school district may borrow under this act is based on the calculation which the Director must make within five days after the act went into effect. This calculation was made in this case, the amount certified being \$2142 00. This was the extent of the amount which this school district could borrow under said Amended Senate Bill No. 412, and this district having already borrowed that amount, it is my opinion that it is not entitled to borrow any more, by reason of the fact that it has been later found that the amount which it is actually entitled to receive is greater than the amount which had been calculated pursuant to the provisions of this act.

It is therefore my advice that you do not purchase this note issue.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2151.

PUBLIC FUNDS—UNDER SECTION 7506, G. C., INTEREST MUST BE
PAID BY DEPOSITORY BANK.

SYLLABUS:

A state statute, such as Section 7605, General Code, requiring that a contract for the deposit of public funds be awarded to the bank or banks offering the highest rate of interest, implies the payment of interest in some amount, although no minimum rate is stated, and such statute is a state law requiring the payment of interest within the meaning of the proviso contained in Section 11b of the Banking Act of 1933.

COLUMBUS, OHIO, January 11, 1934.

HON. GEORGE W. SECREST, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—I have your letter of recent date, which reads as follows:

“In Opinion No. 1208, rendered by your office on July 2, 1933, it was held that depositaries of county, township and school district funds might pay interest on such funds without violating Section 19 of the Federal Reserve Act as amended by the Glass-Steagall Act. In the opinion you quoted the act as amended, as follows:

‘This paragraph shall not apply * * * to any deposit of public funds made by or on behalf with any state, county, school district, or other subdivision or municipality, with respect to which payment of interest is required under state law.’

Since the opinion was rendered, Section 7605, General Code, has been amended by the Ohio Legislature to read in part as follows:

‘In school districts containing two or more banks, such deposits 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.’

Prior to the amendment, the above sentence contained a provision for a minimum rate of interest in the words, ‘which must be at least two per cent.’

Questions:

I. Does the section as it now stands require the payment of interest on school funds?

II. Can a bank pay interest on school funds under a depository agreement entered into subsequent to June 16, 1933, without violating Section 19 of the Federal Reserve Act as amended?"

The amendment to Section 19 of the Federal Reserve Act, referred to in your letter, appears as Section 11b of the Banking Act of 1933, effective June 16, 1933.

In Opinion No. 1384, rendered by this office August 11, 1933, it was held, as disclosed by the third branch of the syllabus:

"The fact that section 4295 of the General Code does not prescribe a minimum rate of interest which a depository bank must pay upon municipal deposits, does not prevent that section from being a state law requiring the payment of interest within the meaning of the proviso contained in section 11(b) of the Banking Act of 1933."

Section 4295 of the General Code, requiring the payment of interest upon deposits of funds of municipalities, was under consideration in that opinion. That section reads in part:

"The council may provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer, in such bank or banks, situated within the municipality or county, as offer, at competitive bidding, the highest rate of interest and give a good and sufficient bond issued by a surety company authorized to do business in the state, or furnish good and sufficient surety, or secure said moneys by a deposit of bonds. * * *"

The pertinent part of Section 7605, quoted in your letter, provides that school funds shall be awarded to the bank or banks that at competitive bidding "offer the highest rate of interest for the full time the funds or any part thereof are on deposit."

Section 4295 of the General Code provides that the funds of a municipality shall be awarded to the bank offering the highest rate of interest.

Both sections require the giving of adequate security. In neither section is a minimum rate of interest required to be paid by the depository. The following language from the body of the former opinion of this office is dispositive of your question:

"In answering your first and second questions, you will note that I have assumed the distinction between the statutes prescribing a minimum rate of interest to be paid and the municipal depository statute providing for the deposit in the bank which offers the highest rate of interest, to be immaterial. In my opinion that is correct. The proviso in section 11(b) of the Banking Act of 1933 excepts all public deposits 'with respect to which payment of interest is required under State Law.' No mention is made of how much interest must be required under state law. The requirement in section 4295 that the contract shall be awarded

to the bank offering the highest rate of interest and giving sufficient security presupposes that the banks bidding for the deposit offer to pay interest in some amount."

In the light of the foregoing, and in specific answer to your inquiry, it is my opinion that a state statute, such as Section 7605, General Code, requiring that a contract for the deposit of public funds be awarded to the bank or banks offering the highest rate of interest, implies the payment of interest in some amount, although no minimum rate is stated, and such statute is a state law requiring the payment of interest within the meaning of the proviso contained in Section 11b of the Banking Act of 1933.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2152.

PUBLIC FUNDS—COUNTY BOARD OF EDUCATION UNAUTHORIZED TO DEPOSIT FUNDS IN BANK—BANK DEPOSIT INSURANCE AFFORDED BY BANKING ACT NOT ADEQUATE SECURITY FOR PUBLIC FUNDS—INTEREST ON SUCH DEPOSITS REQUIRED—PROCEDURE WHEN SUBDIVISION UNABLE TO OBTAIN DEPOSITORY—BOARD OF EDUCATION AUTHORIZED TO PROCURE LIABILITY AND PROPERTY DAMAGE INSURANCE WHEN.

SYLLABUS:

1. *County boards of education do not have the actual custody of any public funds and are not authorized by law to deposit money in banks. The moneys constituting "the county board of education fund" spoken of in Section 4744-3, General Code, are to be held in the county treasury and deposited by the county commissioners in county depositories as provided by Sections 2715 et seq. of the General Code of Ohio.*
2. *The guarantee or insurance of bank deposits afforded by virtue of the Banking Act of 1933, is not such security as may be furnished by a bank under the laws of Ohio, as security for deposits of the public funds of the state, counties, municipalities, school districts and townships within the state.*
3. *Unless a bank furnishes proper security for deposits of public funds under the several depository laws of this state relating to the deposit of public funds of the state, counties, municipalities, school districts and townships, lawful contracts for the deposit of these funds can not be made with it, and a bank receiving such deposits with knowledge of the nature thereof, which does not furnish security as provided by the statutes of Ohio, will be held to account in full for the deposits so received, together with all profits accruing therefrom.*
4. *The state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the authorities of municipal corporations are not permitted, under the several depository laws of this state, to enter into contracts with banks or trust companies for the deposit of the public funds under their control, without interest.*
5. *Where public authorities, such as the state board of deposit, boards of county commissioners, boards of education, boards of township trustees and the*