

3130.

APPROVAL, BONDS OF MIFFLIN TOWNSHIP CENTRALIZED SCHOOL DISTRICT, WYANDOT COUNTY, OHIO—\$2,700.00.

COLUMBUS, OHIO, April 7, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3131.

UNDERTAKING—SECURING PUBLIC FUNDS IN COUNTY DEPOSITORY—SURETIES MUST BE RESIDENTS AND FREEHOLDERS OF COUNTY WHOSE MONEYS ARE TO BE SECURED.

SYLLABUS:

The phrase "such undertaking shall be signed by at least six resident freeholders as sureties" appearing in Section 2723, General Code, relating to the security to be provided by county depositories, requires that the sureties signing the undertaking reside and have a freehold interest in real property in the county whose moneys are to be secured.

COLUMBUS, OHIO, April 9, 1931.

HON. GEORGE S. MIDDLETON, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—I am in receipt of your recent communication, which reads as follows:

"Section 2723 of the General Code of Ohio, provides as follows:

'Such undertaking shall be signed by at least six resident freeholders as sureties * * *'

Does this provision of the Code require that all sureties be actual residents of the county and also freeholders of the county?

We have two banks near the county line with Directors who are offered as sureties on depository bonds, residing outside of the county, but owning real estate in the county and others residing in the county, but freeholders in the adjoining county."

Section 2723, General Code, relating to the security to be provided by banks in which county funds are to be deposited, provides as follows:

"Such undertaking shall be signed by at least six resident free-holders as sureties or by a fidelity or indemnity insurance company, authorized to do business within the state and having not less than two hundred and fifty thousand dollars capital, to the satisfaction of the commissioners, conditioned for the receipt, safe keeping and payment over of all money with interest thereon at the rate specified in the proposal, which may come under its custody under and by virtue of this chapter and under and by virtue of its proposal and the award of the commissioners, and conditioned for the faithful performance by such bank or banks or trust companies of all the duties imposed by law upon the depository or depositories of the money of the county."

It is quite evident from a reading of the above section that the legislature has failed to expressly state that the sureties shall be residents and freeholders of the county whose

moneys are being secured. However, it would seem that this must have been the intention of the legislature.

It is well established that when a phrase has in law acquired a fixed legal significance and is incorporated into a statute, the legal presumption is that the legislature meant to use it in this legal sense. See *Palmers v. Darby*, 64 O. S., 520, 529; *Grogan v. Garrison*, 27 O. S., 50, 63; and *Turney v. Yeoman*, 14 Ohio, 207, 218.

Now the phrase "resident freeholder", as it is used in the law, is interpreted in 34 Cyc., 1658, as,

"A term which requires that both residence and freehold be in that locality in connection with which the term is used."

The locality in connection with which the term is used in the present instance is the county. Section 2723, General Code, is in *pari materia* with Sections 2715 to 2745, General Code, inclusive, which sections appear in the Code under the heading "County Depository." Furthermore, the undertaking which the sureties sign, shows that said sureties obligate themselves to the county whose money is deposited, and that any recovery on such bond is to be in the name of the county commissioners for the use of the county. See Section 2726, General Code.

Based on the foregoing, I am of the opinion that the provision "such undertaking shall be signed by at least six resident freeholders as sureties" appearing in Section 2723, General Code, requires that the sureties signing the undertaking reside and have a freehold interest in real property in the county whose moneys are to be secured.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3132.

METHOD—FOR THE DETERMINATION OF NUMBER OF TEACHERS ON WHICH TO BASE DISTRIBUTION OF PORTION OF COUNTY EDUCATION EQUALIZATION FUND ATTRIBUTABLE TO TEACHERS—HELD PRACTICAL.

SYLLABUS:

In the absence of an abuse of discretion, it is not unlawful for a county board of education, after making the survey of its county school district as directed by section 7600, General Code, to adopt a plan for the determination of the number of teachers to be credited to the several school districts of the county district, upon which to base the distribution of that portion of the county education equalization fund attributable to teachers, by fixing that number in proportion to the number of pupils in the districts, even though, under the plan so adopted, the ratio of teachers to pupils may be different for different classes of districts.

COLUMBUS, OHIO, April 9, 1931.

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

GENTLEMEN:—I am in receipt of your request for my opinion with reference to the practical application of Section 7600, General Code, in the distribution of the proceeds of the 2.65 mills tax levy provided for by section 7575, General Code, to school districts outside of city and exempted village districts.

It appears that a certain county board of education, after making a survey of