

995.

THE UNIFORM DEPOSITORY ACT HAS TO DO WITH SAFE-
GUARDING PUBLIC MONEYS—STRICT CONSTRUCTION—SECURITY FOR PUBLIC MONEYS.

SYLLABUS:

1. *The Uniform Depository Act has to do with the safeguarding of public moneys and must be construed strictly.*

2. *A treasurer is required, under Section 15a of the Act, (Section 2296-15a, General Code), to require of a designated depository that it pledge and deposit with him eligible securities as security for the public moneys therein deposited and the treasurer is without authority in law to accept custody receipts in lieu thereof.*

COLUMBUS, OHIO, August 10, 1937.

HON. WM. J. HUNTER, *Prosecuting Attorney, Upper Sandusky, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

"I am requested by the County Board of Commissioners to secure an opinion from your Department concerning the following question:

Under Section 15A of the Uniform Depository Act of Ohio would a Treasurer be authorized to accept as security for public money deposited in a Banking Institution what is designated as custody receipts?

Several of our local banks have numerous bonds and securities deposited in the custody of large State banks in cities for safe keeping. When the City bank receives these bonds or securities they issue a custody receipt setting forth in some detail the description of each bond or security. These banks clip the coupons on the Bonds and will not release any of the Bonds without the presentation of the receipt. Under our present arrangement the Treasurer has been keeping all security bonds in a lock box in the bank but it is felt that too great a risk is involved in keeping so many bonds deposited in the local banks and it is felt that if an agreement can be entered into between the Bank and the subdivision whereby the Bank would assign the custody receipts to the Treasurer and where notice would be given to the Bank having custody of the bonds of the

assignment that it would eliminate considerable risk to the officials and the Sub-division.

This arrangement has already been entered into between the Municipal corporation with one of the local banks but there is some question in my mind if the arrangement will comply with the legal requirements. Please give me your expression on the matter."

Your question is answered by a careful reading of Section 15A of The Uniform Depository Act, now bearing Section Number 2296-15a, General Code of Ohio. There are no dark spots in this section and it admits of no interpretation. It deals with the safety of public moneys, must be strictly construed and its provisions are mandatory, unless it is clearly manifest that they are reclaratory or directory.

Your question is limited to the duties of the treasurer of the county and subdivisions thereunder. Section 2296-15a, General Code, is too voluminous to quote and I shall content myself with reference thereto. It must be read in the light of all other sections of the Act. Subscription (b) of Section 1 of the Act defines "subdivision" as used in the Act and it comprehends each and all subdivisions known under the laws of Ohio.

Subsection (g) defines "treasurer" as the treasurer of state and the treasurer or other officer exercising the functions of treasurer, of any subdivision.

It will be noted that Section 1 is a definitive section. It defines in addition to "subdivision" and "treasurer", "public moneys", "public deposit", "public depository", "active deposit", "inactive deposit", "auditor", "governing board," "permissible rate of interest" and "capital funds". The General Assembly having defined these terms, its definitions must be accepted and followed.

Section 2296-15a, General Code, provides in substance that before making a deposit in a public depository, the treasurer shall require it *to pledge and deposit with him*, as security for the payment of all public moneys to be deposited in the depository during the period of designation, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time deposited over the amount of \$5,000.00 protected by federal deposit insurance. It further provides that the amount of securities pledged and deposited with him shall be increased in proportion as the original amount deposited is increased and he may likewise require additional pledges in case of the depreciation of securities already pledged and deposited with him.

A list of eligible securities is listed in the section. It further provides that in case any depository makes default the treasurer shall sell at public

sale, any or all the securities so deposited with him and make settlement with the depository.

As a finality the section provides that the governing board may make provisions for the exchange and release of securities and the substitution of other eligible securities therefor. You will note that this section provides in no uncertain terms that the treasurer shall require the depository *to pledge and deposit with him the eligible securities*. Nowhere in the law is the treasurer authorized to receive a custody receipt in lieu of eligible securities and until the General Assembly recognizes "custody receipts" as the equivalent of "eligible securities", there is but one safe course for the treasurer to follow, namely, require the depository *to pledge and deposit with him the eligible securities*.

This opinion is fortified by a former opinion of this office, namely, Opinion No. 3280, Opinions of the Attorney General (1931) Volume II, page 747. Under the depository law as it then existed, the county commissioners were required to select depositories for the public moneys of the county and were authorized to receive as security therefor, certain securities enumerated in the statute. This was a formal opinion of the office and I quote the syllabus:

"The board of county commissioners which accepts securities from a depository bank as security for county deposits therein, in lieu of an undertaking therefor, by authority of Section 2732, General Code, should receive said securities, by a proper legal transfer thereof, to such an extent as to have complete and exclusive control of and dominion over the same."

While it is true that the officials are different, the principle involved is the same. I therefore concur in and follow said opinion.

I appreciate that such an arrangement increases the responsibility of the treasurer, but the General Assembly imposed this additional responsibility and if treasurers are to be relieved of it, the General Assembly must do it.

Answering your question specifically, in my opinion a treasurer has no authority to accept custody receipts as security for public moneys deposited in a designated depository in lieu of eligible securities as provided by Section 2296-15a, General Code.

Respectfully,

HERBERT S. DUFFY,

Attorney General.