

205.

TITLE GUARANTEE AND TRUST COMPANIES—UNDER SECTIONS 323, ET SEQ., GENERAL CODE, MAY ACT AS DEPOSITARIES OF STATE FUNDS.

*SYLLABUS:*

*Title guarantee and trust companies may be designated as and act as depositaries of state funds under the provisions of Sections 323, et seq., General Code.*

COLUMBUS, OHIO, March 18, 1927.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

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

“The Title Guarantee and Trust Company, of Columbus, Ohio, operates under Section 9850-56 of the General Code, and under the provisions of Section 9851 G. C., has deposited with the Treasurer of State \$50,000 in approved securities—a requirement necessary in order to do business in Ohio.

This company desires to submit bids for state funds, bids for which are being received at the present time by the Treasurer of State.

Your opinion is requested on the question as to whether the company named above is such a Trust Company as may be designated as a depository of state funds by the Depository Board, of which the Treasurer of State is Chairman.

In passing upon this question, the attention of the present Attorney General is invited to an opinion issued on April 22, 1909, by Hon. U. G. Denman, the then Attorney General, and which opinion will be found in the printed Report of the Attorney General for 1909.”

The opinion of the Attorney General to which you refer in your letter is decisive of the question which you now ask.

Upon examination of the depository act. I find no change in the law which would affect in any way the question presented.

Section 323 of the General Code is as follows:

“It shall be the duty of said board to meet on the first Monday in April, 1911, and every two years thereafter, or as often as is necessary at the call of the chairman, after this bill becomes operative, and designate such national banks within the state and banks and trust companies doing business within this state, and incorporated under the laws thereof as the board deems eligible to be made state depositories.”

It will thus be seen that “trust companies” are entitled to become state depositories, but they are no more definitely defined, either in that section or in any other sections applicable. The same classes of depositories are recognized for the deposit not only of state funds but also of county, municipal and board of education funds. It is therefore apparent that reasoning applicable to the case of a state depository would also apply to the other depository provisions.

In Report of the Attorney General for 1914, Vol. II, at page 1743, is an elaborate opinion which holds, among other things, that:

“Title guarantee and trust companies may be designated as and act as depositories of county funds under Sections 2715, et seq., General Code, and

secure the funds deposited with them in the manner provided by said sections."

In this opinion the former opinion rendered in 1909 is referred to and followed and attention is called to an unreported case decided by the common pleas court of Franklin county, Ohio, in which the direct question was raised as to whether a title guarantee and trust company could be designated to act as a depository for county funds under an act passed April 2, 1906, 98 O. L., 274. The common pleas court allowed a mandatory injunction to compel the county commissioners to recognize title guarantee and trust companies as eligible.

I am unable to find any other decision having direct bearing on the question at hand. The former opinions of this department are well reasoned and have, in my mind, reached the proper conclusion.

You are therefore advised that title guarantee and trust companies may properly be designated as depositaries of state funds.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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206.

TAX COMMISSION OF OHIO—AUTHORIZED TO REQUIRE REPORTS ANNUALLY FROM ALL PUBLIC UTILITIES WHETHER BUSINESS BE INTRASTATE OR INTERSTATE—WHERE PUBLIC UTILITIES HAVE NO INTRASTATE EARNINGS IN OHIO—STATE NOT AUTHORIZED TO CHARGE MINIMUM EXCISE TAX.

*SYLLABUS:*

1. *The tax commission of Ohio is authorized to require reports annually from all public utilities doing business in this state, whether said business be intra or interstate.*
2. *Where a public utility has no intrastate earnings in Ohio the state is not authorized to charge the minimum excise tax.*

COLUMBUS, OHIO, March 19, 1927.

*The Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN :—This will acknowledge receipt of your recent communication which reads as follows :

"The commission has directed me to acknowledge the receipt of yours of the 3rd instant to which you have attached a copy of a letter which you had received from Mr. S. regarding an excise tax charge assessed against the Louisville & Nashville Railroad Company.

This company you will note has made no excise tax report to this commission since 1916. There are several other utilities in the same situation and which have failed or refused to make any report or showing with regard to their business. It seemed to the commission that the mere fact that a utility, which operates in Ohio, had no intrastate earnings in 1916 does not **necessarily impel the conclusion** that it had no such earnings in 1926. Conditions change and the commission is of the opinion that each utility which so