5607.

APPROVAL—PAPERS IN CONNECTION WITH THE CONVERSION OF THE SOCIETY SAVINGS AND LOAN COMPANY OF AKRON, OHIO, INTO FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF AKRON.

COLUMBUS, OHIO, May 25, 1936.

HON. WILLIAM H. KROEGER, *Superintendent of Building and Loan Associations of Ohio, Columbus, Ohio.*

DEAR SIR: I have examined the various papers submitted by you in connection with the conversion of The Society Savings and Loan Company of Akron, Ohio, into First Federal Savings and Loan Association of Akron, and find the papers submitted and the proceedings of said The Society Savings and Loan Company, as disclosed thereby, to be regular and in conformity with the provisions of section 9660-2 of the General Code of Ohio.

All papers, including two copies of the charter issued to the said First Federal Savings and Loan Association, are returned herewith to be filed by you as a part of the permanent records of your department, except one copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said section 9660-2 have been complied with by The Society Savings and Loan Company, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,
JOHN W. BRICKER,
Attorney General.

5608.

DEPOSITORY—COUNTY COMMISSIONERS UNAUTHORIZED TO RELEASE CONTROL OVER SECURITIES FOR PUBLIC FUNDS UNDER AGREEMENT WITH TRUST COMPANY.

SYLLABUS:

A board of county commissioners may not enter into an agreement whereby control and dominion over collateral, hypothecated by a depository bank to secure county funds, are relinquished to a trust company,

with power to sell and reinvest the proceeds in other eligible securities upon instructions from the depository, even though such trust company would be required at all times to hold as trustee or agent for the county sufficient eligible collateral and cash to secure the county funds on deposit.

COLUMBUS, OHIO, May 26, 1936.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: I have your request for my opinion which reads as follows:

> "There is now in existence a depositary contract between the Board of Commissioners of Seneca County and the Tiffin National Bank for the deposit of public funds and the deposit is secured by collateral such as first mortgages on real estate and bonds in accordance with the statutes governing public deposits.
>
> The bank now desires to place the bonds in the hands of the Manufacturer's Trust Company of New York to be held by the trust company as security for the deposit of public moneys but with the privilege of selling said bonds upon the open market when so instructed by the bank and substituting therefor either the money received for their sale or other bonds purchased by the trust company in the open market for the bank.
>
> In other words, the bank desires to send the bonds to New York so that they may be quickly traded, however, at all times having on hand in the trust company possession sufficient bonds or cash to secure the county deposit. It would amount to the County Commissioners constituting the Manufacturer's Trust Company in New York its agent to hold and deal in the securities. Only collateral allowed by statute would be originally placed in the trust company possession and only such collateral could be substituted by the bank in the place of the original bonds, or for the cash realized from the sale of such bonds.
>
> The bank has inquired as to whether this procedure could be followed and I have advised that in my opinion the Commissioners do not have the right to delegate such authority, but your opinion has been requested."

As held in the case of *Fidelity & Casualty Company* v. *Union Savings Bank,* 119 O. S., 124 (1st branch of syllabus):

> "The legislature alone has authority to empower a public officer to make a deposit of state funds in a banking institution and to provide the terms and conditions of such deposit."

This conclusion applies likewise to the deposit of the funds of the various political subdivisions of the state and is in line with the general principle that public officers possess only those powers specifically granted by statute, together with such implied powers as are reasonably necessary to effectuate those expressly given. *Peter* v. *Parkinson,* 83 O. S., 36; *State ex rel.* v. *Pierce,* 96 O. S., 44; *Frisbie Co.* v. *East Cleveland,* 98 O. S., 266.

In the case last cited the court held, as disclosed by the first branch of the syllabus:

> "1. Where a statute prescribes the mode of exercise of the power therein conferred upon a municipal body, the mode specified is likewise the measure of the power granted, and a contract made in disregard of the express requirements of such statute is not binding or obligatory upon the municipality."

Sections 2715 to 2738, Section 2288-1 and Section 4295, General Code, contain the statutory authority to create county depositories. As appears from the provisions of these sections certain securities may be hypothecated by a depository bank to secure county funds in place of the undertaking otherwise required. Certain of these securities are enumerated in Section 2732, General Code.

Section 2734, General Code, reads as follows:

> "The hypothecation of such securities shall be the proper legal transfer thereof as collateral which shall stipulate that such securities shall be the property of the county in case of any default on the part of the bank in its capacity as depository, and that the negotiation or release thereof by the commissioners shall require the signature of at least two members of the board of county commissioners."

Section 2735, General Code, provides:

> "The county commissioners shall make ample provision for the safe keeping of hypothecated securities. The interest thereon, when paid, shall be turned over to the bank or trust company so long as it is not in default. The commissioners may make provisions for the exchange and release of securities and the substitution of other securities or of an undertaking therefor."

The three sections last mentioned were considered in an opinion reported in *Opinions of the Attorney General,* 1931, Vol. 2, page 747, where it was held as disclosed by 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."

In that instance the depository bank had on deposit in another bank proper securities sufficient in amount and desired to assign the receipt therefor to the county. In holding illegal such contemplated arrangement my predecessor said at p. 748:

> "An actual delivery of the securities so as to place them in complete custody of the commissioners, and under the absolute control of the commissioners is apparently contemplated by the statute, Section 2735, supra, inasmuch as it provides that the commissioners shall make ample provision for the safe-keeping of the hypothecated securities and shall pay any interest that may be earned upon them to the bank or trust company which had hypothecated them. The commissioners could not do this unless they had custody and control of the securities. The further fact that the commissioners are authorized to release the securities and under certain circumstances to exchange them for other securities further fortifies the conclusion, in my opinion, that the statutes contemplate complete custody of the securities on the part of the commissioners."

Prior to the rendition of that opinion this office had twice held that securities hypothecated by depository banks should at all times be under the control and dominion of the officers of the political subdivision involved. *Opinions of the Attorney General,* 1921, p. 745; *Opinions of the Attorney General,* 1927, Vol. 2, p. 990. In another opinion it was pointed out that the county treasurer is personally liable in the event securities hypothecated with him are lost. *Opinions of the Attorney General,* 1928, Vol. 3, p. 1933.

The latest expression of this office is to be found in an opinion reported in *Opinions of the Attorney General,* 1933, Vol, 2, p. 1065, where it was held, as appears from the syllabus:

> "A county, city, city school district, other school district within the geographical limits of the county, townships within the geographical limits of the county and villages located therein, may not accept as security for the deposit of their respective pub-

> lic funds, the deposits of securities and mortgages with trustees who may, or may not be fiscal officers of such subdivision under a trust agreement which vests the control and custody of such securities in such trustees, to be deposited in a safe deposit box which may not be opened except by one of such trustees and an officer of the depositary bank in trust for the purpose of securing each of such political subdivisions from loss which may be occasioned by any default of the depositary."

The first question of law presented by the inquiry then before me was whether a political subdivision might permit the custody of securities hypothecated to it to be placed in any other manner than in the exclusive control of the subdivision. On this point, after reviewing the 1921, 1927 and 1928 opinions, *supra,* I said at p. 1069:

> "The evident purpose of the Legislature in authorizing the deposit of securities as security for public deposit was to enable the public depositor to realize the amount of his damage from the sale of such collateral, in the event of a default by the depositary. Bearing in mind such purpose, the terms of the depositary acts, and taking into consideration the reasoning underlying the opinions of former Attorneys General, I am not persuaded to depart from the holdings of such opinions.
>
> It is likewise my opinion that when securities are hypothecated by a public depositary for the purpose of securing a public deposit, such securities must be deposited in such manner that the public depositor has the exclusive custody and dominion over the same.
>
> Since, in your request and in the proposed indemnity trust agreement the securities deposited will not be in the exclusive control or dominion of a particular subdivision, but rather in the hands of trustees 'in trust for the benefit of all said depositors * * * without priority one over another' and are 'under the joint control of the trustees of said depositary' it would appear to me that the subdivisions in question have no authority to enter into the agreement attached to your request. I must therefore answer the first question in the negative."

Without further extending this discussion, it is my opinion that a board of county commissioners may not enter into an agreement whereby control and dominion over collateral, hypothecated by a depository bank to secure county funds, are relinquished to a trust company, with power to sell and reinvest the proceeds in other eligible securities upon instruc-

tions from the depository, even though such trust company would be required at all times to hold as trustee or agent for the county sufficient eligible collateral or cash to secure the county funds on deposit.

Respectfully

JOHN W. BRICKER,

Attorney General.

5609.

APPROVAL—CANAL LAND LEASE TO LAND IN NEWCOMERSTOWN, TUSCARAWAS COUNTY, OHIO—J. M. KADEN OF CHICAGO, ILL.

COLUMBUS, OHIO, May 26, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a canal land lease in triplicate executed by you as Superintendent of Public Works and as Director of said Department, acting for the state of Ohio, to one J. M. Kaden of Chicago, Illinois. By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of $30.00 payable in semiannual installments of $15.00 each, there is leased and demised to the lessee above named the right to occupy and use for building and driveway purposes that portion of the Ohio Canal property located in the village of Newcomerstown, Tuscarawas County, Ohio, and described as follows:

> Beginning at the point of intersection of the north line of said canal property and the easterly line of the first alley west of Bridge Street in said city and running thence easterly with the said north line of said canal property forty (40') feet, more or less, to the westerly line of the building now owned by T. J. Shannon; thence southerly twenty-one and three-tenths (21.3') feet, more or less, to a point which is ten (10') feet south of the southwesterly corner of said Shannon building; thence westerly parallel with the south line of said Shannon building fifteen (15') feet, more or less, to a point that is one hundred seventy-five (175') feet west of the west line of Bridge Street; thence southerly sixty-two (62') feet, more or less, to the southerly line of said canal property; thence westerly twenty-five (25') feet, more or less, to the easterly line of said alley; thence northerly with