

method in which the same may be withdrawn from the treasury for the purpose of reimbursing the applicant in the event it appears that she is entitled to reimbursement. As you suggest in your communication, and as provided by Section 22 of Article II of the Ohio Constitution, no money may be withdrawn from the state treasury except in pursuance of a specific appropriation made by law. I would therefore recommend that, in the event the applicant feels that in the light of what has been said above she is entitled to reimbursement, she present her claim to the Sundry Claims Board for action by the next Legislature if the Sundry Claims Board determines that she is entitled to relief.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1704.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE OHIO RIVER EDISON COAL COMPANY FOR THE CONSTRUCTION OF AN UNDERPASS ACROSS STATE HIGHWAY NO. 378 IN KNOX TOWNSHIP, JEFFERSON COUNTY, OHIO.

COLUMBUS, OHIO, February 13, 1928.

HON. GEORGE F. SHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a contract between the Ohio River Edison Coal Company as first party, and the State of Ohio, acting by and through George F. Schlesinger, as Director of Highways, as second party, providing for the construction of an underpass across State Highway No. 378 in Knox Township, Jefferson County, Ohio.

I have carefully examined the contents of said contract and finding the same correct in form and legal, and, further, that the same protects the interests of the state, I am hereby approving the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1705.

STATE TREASURER—SECURITIES DEPOSITED IN TREASURY UNDER SECTION 710-150, GENERAL CODE—LIABILITY IN CASE OF LOSS.

SYLLABUS:

The state will not be liable should securities deposited with the state treasurer, under Section 710-150, General Code, be lost through burglary, holdup, theft or otherwise, but in such case the liability for the loss of such securities will be one against the state treasurer and the sureties on his official bond.

COLUMBUS, OHIO, February 13, 1928.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication, reading as follows:

"The opinion of the Attorney General is requested upon the following :

Banks in the State of Ohio which desire to do a trust business must deposit securities in the sum of \$100,000, as a trust company, with the treasurer of state. These banks assume that the state is liable as custodian of these securities while the said securities are in the custody of the treasurer of state.

Is there any legislation which denies the state's responsibility should these securities be lost through burglary, holdup or theft?

This information is desired largely as a rule for the surety companies which do business, along the line described, in the State of Ohio."

Section 710-150, General Code, as amended in 112 O. L. 198, provides as follows :

"No trust company, or corporation, either foreign or domestic, doing a trust business shall accept trusts which may be vested in, transferred or committed to it by a person, firm, association, corporation, court or other authority, of property within this state, until its paid in capital is at least one hundred thousand dollars, and until such corporation has deposited with the treasurer of state in cash the sum of one hundred thousand dollars, except that the full amount of such deposit by such corporation may be in bonds, or other interest bearing obligations of the United States or those for the payment of principal and interest of which the faith of the United States is pledged, including bonds of the District of Columbia; bonds of this state or any municipality or county therein, or of any other state or any municipality or county therein, or in the first mortgage bonds of any railroad corporation that for five years last past has earned at least five per cent net on its issued and outstanding capital stock, which securities and the sufficiency thereof shall be approved by the superintendent of banks. From time to time said treasurer shall, with the approval of the superintendent of banks, permit withdrawals of such securities or cash, or part thereof, upon deposit with him and approval of the superintendent of banks, of cash, or other securities of the kind heretofore named, so as to maintain the value of such deposits as herein provided, and so long as it continues solvent he shall permit it to collect the interest on its securities so deposited."

Your question is whether there is any legislation which denies the liability of the state should any of the securities deposited with the state treasurer, under the provisions of the above quoted section, be lost through burglary, holdup or theft.

By way of categorical answer to your question, I may say that I know of no legislation of this kind. As to this, however, it is probably sufficient to observe that no legislation has been enacted which imposes any liability upon the state in the event that any of such securities so deposited with the treasurer of state are lost through burglary, holdup, theft or otherwise. Touching the question of liability in such case, the following sections of the General Code, relating to the office of treasurer of state, are noted :

Section 297, General Code, reads :

"Before entering upon the discharge of the duties of his office, the treasurer of state shall give a bond to the state in the sum of six hundred thousand dollars with twelve or more sureties approved by the governor, conditioned for the faithful discharge of the duties of his office. Such

bond, with the approval of the governor and the oath of office indorsed thereon, shall be deposited with the secretary of state and kept in his office."

Section 298, General Code, provides that the treasurer of state shall give additional bond when the same is required by the General Assembly or the Governor. Section 299, General Code, provides as follows:

"The rooms assigned the treasurer of state by authority of the state, with the vaults, safes and other appliances therein provided for the safe keeping of the public monies, shall constitute the treasury of the state, and shall be used by the treasurer of state as the sole place for the deposit and safekeeping of the monies, bonds, notes, obligations, claims, stocks, securities, and assets of the state, and of all monies, bonds, stocks, obligations, claims, securities, and property required by law to be deposited or kept in the treasury of the state. The deposit of public monies in duly constituted state depositories by the treasurer of state as provided by law shall be deemed a compliance with this section."

Under the obligation imposed upon the treasurer of state by oath of office and bond to faithfully discharge the duties of his office, he is required to safeguard such securities deposited by any trust company or corporation with him as treasurer of state under said Section 710-150, General Code, and the state treasurer is liable individually and on his official bond for the loss of such securities so deposited, whether said loss be by reason of burglary, robbery, theft or otherwise, and without reference to any negligence or other fault on his part in the premises. Such liability on the part of the state treasurer and the sureties on his official bond would, of course, be to the trust company or corporation which owns such securities and deposits the same with the state treasurer.

In this connection it will be recalled that some years ago a United States Government bond deposited with the state treasurer by one of the banks in this state, for the purpose of securing a deposit with such bank of state insurance funds, under the sections of the General Code relating to the deposit of such funds (Sections 330-3 and 1465-57, General Code), was lost in the state treasury apparently without any negligence or other fault on the part of the state treasurer. The Legislature, in passing an act appropriating a sufficient sum of money to cover the amount of said lost bond and the interest coupons thereof, provided that the money thus appropriated should be paid over to the bank which had deposited said bond with the state treasurer, and said act, which was one for the relief of the then treasurer of state, was passed in express recognition of the fact that under the laws of Ohio and the terms of his official bond, the state treasurer was required and obligated to pay to such bank the value of said bond and the accrued interest thereon. (109 O. L. 208.)

By way of specific answer to your question, I am of the opinion that the state will not be liable should securities deposited with the state treasurer, under Section 710-150, General Code, be lost through burglary, holdup, theft or otherwise, but that in such case the liability for the loss of such securities will be one against the state treasurer and the sureties on his official bond.

Respectfully,
EDWARD C. TURNER,
Attorney General.