

## OPINION NO. 69-114

**Syllabus:**

Under the Uniform Depository Act the awarding of active deposits can be made only to eligible and qualifying institutions that file an application for such award.

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**To: Harry A. Sargeant, Jr., Sandusky County Pros. Atty., Fremont, Ohio**  
**By: Paul W. Brown, Attorney General, September 12, 1969**

I have your request for my opinion on a question arising under the Uniform Depository Act, Chapter 135 of the Revised Code. Your request reads as follows:

"In your opinion, does Section 135.04 of the Revised Code require that every qualifying institution be awarded its share of active deposits of public monies, or is the awarding of such active deposits to be made only to those institutions which file an application?"

The portion of Section 135.04, Revised Code, which you have set out in your letter, is quoted as follows:

"The governing board of a subdivision shall award \* \* \* the active deposits of public monies subject to its control in excess of twenty-five thousand dollars to the eligible institution or institutions applying or qualifying therefor in proportion to their respective award quotes \* \* \*."

(Emphasis added)

Section 135.03, Revised Code, defines the banks which are eligible for deposits and reads in part as follows:

"Any national bank located in this state and any bank as defined by section 1101.01 of the Revised Code, subject to inspection by the superintendent of banks, is eligible to become a public depository, subject to sections 135.01 to 135.21, inclusive, of the Revised Code."

This section then continues with language which may be deemed to prescribe the qualification of a bank for deposits, as the word "qualifying" is used in the quoted portion of Section 135.04, supra. This further language reads as follows:

"No such institution shall receive or have on deposit at any one time public moneys in an aggregate amount in excess of thirty per cent of non-public moneys on deposit as shown in its latest report to the superintendent of banks or comptroller of the currency."

Certain language contained in the third paragraph of Section 135.04, supra, appears to me to be dispositive of the question of whether only an eligible banking institution that makes application can be designated as a public depository and receive an award of public funds. This language reads as follows:

"\* \* \* except that no such public depository shall thereby be required or permitted to receive and have at any one time a greater amount of active deposits of such public moneys than that specified in the application of such depository."

If the institution did not make application, there would necessarily be no amount specified in the application and therefore it could not, under this provision, receive any amount as an award.

The question arises as to the meaning contemplated by the legislature in using the words: "applying or qualifying" in the first quoted part of Section 135.04, supra. Section 1.02, Revised Code, under the title "definitions", provides that the word "or" may be read as the word "and" if the sense requires it. I think the sense and logic of the respective code sections in question does in this instance require that the word "or" be read as the word "and". Thus, to receive an award a bank that applies must be eligible as provided in the first quoted portion of Section 135.03, supra, and it must also qualify as provided in Section 135.03, supra, by not having on deposit public money in excess of thirty per cent of non-public moneys.

The conclusion is certain that an award of public moneys can not be made to an institution, even though eligible and qualifying, unless that institution makes application.

I am, therefore, of the opinion and you are so advised that under the Uniform Depository Act the awarding of active deposits can be made only to eligible and qualifying institutions that file an application for such award.