October 21, 1997

OPINION NO. 97-050

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
Courthouse
P.O. Box 490
Painesville, Ohio 44077

Dear Prosecutor Coulson:

You have requested an opinion concerning the allocation of interest earned and paid on moneys deposited with the clerk of the court of common pleas. In your request you have indicated that moneys deposited with the clerk of the court of common pleas in an interpleader action, for supersedeas and criminal bonds, or pursuant to a court order are placed by the clerk into interest-bearing accounts at a local financial institution. Because interest is earned and paid on moneys placed into interest-bearing accounts, the clerk of the court of common pleas wishes to know whether interest earned on these several categories of moneys is to be paid into the county treasury or to the person or entity legally entitled to the principal that earned the interest.

Your specific inquiry arises in light of the language of R.C. 2335.25, which provides as follows:

> The clerk shall be the receiver of all moneys payable into his office, whether collected by public officers of court or tendered by other persons, and, on request, shall pay the moneys to the persons entitled to receive them.
>
> The clerk of the court of common pleas ... may deposit moneys payable into his office in a bank or a building and loan association, as defined in section 1151.01 of the Revised Code, subject to section 131.11 of the Revised Code. *Any interest received upon the deposits shall be paid into the treasury of the county for which the clerk performs his duties.* (Emphasis added.)

R.C. 2335.25 thus requires the clerk of the court of common pleas to pay into the county treasury any interest earned on moneys deposited by the clerk at a financial institution.

In *West Am. Ins. Co. v. Dutt*, 70 Ohio App. 3d 422, 591 N.E.2d 356 (Marion County 1990), an Ohio court of appeals examined whether R.C. 2335.25 requires the clerk of the court of common pleas to disburse to the county treasury interest earned and paid on moneys deposited with the clerk in an interpleader action. In concluding that the clerk of the court of common pleas is not required by R.C. 2335.25 to pay the interest earned on such moneys into the county treasury, the court reasoned as follows:

> The appellant relies on R.C. 2335.25 in support of her claim that the interest in question should be paid to the county general fund. That statute, however, deals with interest collected on fees and costs collected by the clerk. *Columbus Street Railway Co. v. Pace* (1903), 68 Ohio St. 200, 67 N.E. 490; *State v. Glass* (1971), 27 Ohio App. 2d 214, 56 O.O.2d 391, 273 N.E.2d 893. The statute further provides that the clerk must pay monies to the persons entitled to receive them upon request (R.C. 2335.25). Further, R.C. 2303.20(W) [now R.C. 2303.20(V)][1] provides a fee to the clerk for holding funds on behalf of litigants. That statute also provides that the clerk shall charge a commission "and no more." To allow the clerk to receive and pay the interest into the general fund would, in effect, allow her to collect two fees for the holding of funds. *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980), 449 U.S. 155, 159-160, 101 S.Ct. 446, 449-450, 66 L.Ed.2d 358, 363-364.
>
> The United States Supreme Court has struck down as unconstitutional a Florida statute which provided for the payment of interest earned on funds held in an interpleader action, such as that at bar, to the county. In *Webb's Fabulous Pharmacies, Inc. v. Beckwith, supra,* at 161, 101 S.Ct. at 451, 66 L.Ed.2d at 365, the court noted with regard to the funds on deposit:
>
> "It was property held only for the ultimate benefit of Webb's creditors, not for the benefit of the court and not for the benefit of the county. And it was held only for the purpose of making a fair distribution among those creditors. Eventually, and inevitably, that fund, less proper charges authorized by the court, would be distributed among the creditors as their claims were recognized by the court. The

---

[1] R.C. 2303.20(V) provides:

> Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the court of common pleas shall charge the fees and perform the other duties specified in those sections. In all other cases, the clerk shall charge the following fees and no more:
>
> ....
>
> (V) A commission of two per cent on the first ten thousand dollars and one per cent on all exceeding ten thousand dollars for receiving and disbursing money, other than costs and fees, paid to or deposited with the clerk of courts in pursuance of an order of court or on judgments, including moneys invested by order of the court and interest earned on them[.]

> creditors thus had a state-created property right to their respective portions of the fund." (Footnote added.)

*West Am. Ins. Co. v. Dutt* at 424, 591 N.E.2d at 358.

The court in *West Am. Ins. Co. v. Dutt* thus found that, insofar as R.C. 2335.25 requires the clerk of the court of common pleas to pay moneys to the persons entitled to receive them, and R.C. 2303.20 authorizes the clerk to collect only one fee for holding moneys deposited with him in an interpleader action, the clerk is prohibited from retaining and depositing into the county treasury the interest earned and paid on such moneys. Instead, the clerk is required to pay any interest earned on such moneys to the person or entity legally entitled to the principal that earned the interest.

The court's opinion in *West Am. Ins. Co. v. Dutt* sets forth a reasonable interpretation of R.C. 2303.20 and R.C. 2335.25. Moreover, the opinion is well reasoned and persuasive with respect to the disposition of interest earned and paid on moneys deposited with the clerk of the court of common pleas in an interpleader action. As such, the decision of the court in *West Am. Ins. Co. v. Dutt* should be respected and followed. *See* 1989 Op. Att'y Gen. No. 89-098 at 2-478 and 2-479 ("an Ohio Court of Appeals decision is given a great deal of respect and generally, unless inherently wrong, followed by the other Courts of Appeals in Ohio"). It is our view, therefore, that interest earned on moneys deposited with the clerk of the court of common pleas in an interpleader action and placed by the clerk into interest-bearing accounts at a local financial institution may not be paid into the county treasury. Rather, any interest earned on such moneys is to be paid to the person or entity legally entitled to the principal that earned the interest.[2]

We turn now to the issue whether interest earned on moneys deposited with the clerk of the court of common pleas for supersedeas and criminal bonds or pursuant to a court order and placed by him into interest-bearing accounts at a local financial institution is to be paid into the county treasury or to the person or entity legally entitled to the principal that earned the interest. As stated above, the court in *West Am. Ins. Co. v. Dutt* determined that R.C. 2335.25 and R.C. 2303.20 require the clerk of the court of common pleas to pay the interest earned on moneys deposited with him in an interpleader action to the person or entity legally entitled to the principal that earned the interest. Although the court's decision in *West Am. Ins. Co. v. Dutt* does not specifically address the disposition of interest earned and paid on moneys deposited with the clerk of the court of common pleas for supersedeas and criminal bonds or pursuant to a court order, the analysis contained therein does provide general guidance in determining whether R.C. 2335.25 and R.C. 2303.20 require the clerk of the court of common pleas to pay the interest earned on such moneys into the county treasury or to the person or entity legally entitled to the principal that earned the interest.

---

[2] A governmental entity may be entitled to moneys deposited with the clerk of the court of common pleas in an interpleader action. In such a situation, any interest earned on such moneys would be payable to the governmental entity.

R.C. 2303.20 sets forth the fee the clerk of the court of common pleas may charge for taking bonds and for receiving and disbursing moneys in pursuance of a court order. In this regard, R.C. 2303.20 states, in part:

> Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the court of common pleas shall charge the fees and perform the other duties specified in those sections. In all other cases, the clerk shall charge the following fees and no more:
>
> ....
>
> (B) Two dollars for taking each undertaking, bond, or recognizance;
>
> ....
>
> (V) A commission of two per cent on the first ten thousand dollars and one per cent on all exceeding ten thousand dollars for receiving and disbursing money, other than costs and fees, paid to or deposited with the clerk of courts in pursuance of an order of court or on judgments, including moneys invested by order of the court and interest earned on them[.]

Thus, R.C. 2303.20 provides that a clerk of the court of common pleas may only charge and collect two dollars for taking a supersedeas or criminal bond, and a commission of two percent on the first ten thousand dollars and one percent on any amount exceeding ten thousand dollars deposited with the clerk pursuant to a court order.

If the clerk of the court of common pleas were to retain and pay into the county treasury the interest earned on supersedeas and criminal bonds taken by him and moneys received by him pursuant to a court order, the clerk would be charging an additional fee for taking such bonds and receiving deposits pursuant to a court order. *See West Am. Ins. Co. v. Dutt*. Because R.C. 2303.20 unequivocally states that the clerk of the court of common pleas may not charge a fee for taking supersedeas and criminal bonds or receiving and disbursing moneys pursuant to a court order in excess of that enumerated in R.C. 2303.20, the clerk is prohibited from retaining and paying into the county treasury interest earned on moneys received by him for such bonds or pursuant to a court order. *See id.*

Additionally, R.C. 2335.25 requires the clerk of the court of common pleas, upon request, to pay the moneys in his possession to the person or entity entitled to receive them. Generally, neither the court of common pleas nor the county is entitled to moneys deposited with the clerk of the court of common pleas for supersedeas and criminal bonds or pursuant to a court order. Supersedeas bonds are executed by an appellant to an appellee in order to stay execution of a final order, judgment, or decree. *See* R.C. 2505.06; R.C. 2505.09-.16; Ohio R. App. P. 7(B). As stated in R.C. 2505.14:

> A supersedeas bond shall be payable to the appellee or otherwise, as may be directed by the court, when the conflicting interests of the parties require it, and shall be subject to the condition that the appellant shall abide and perform the order, judgment, or decree of the appellate court and pay all money, costs, and damages

> which may be required of or awarded against him upon the final determination of the appeal and subject to any other conditions that the court provides. When the final order, judgment, or decree appealed is for the payment of money, the bond may provide that, if the final order, judgment, or decree is not paid upon final affirmance, it may be entered against the sureties on the bond.

The purpose of a criminal bond is to ensure that the defendant appears at all stages of the criminal proceedings. Ohio R. Crim. P. 46(A); *accord* R.C. 2937.22. A defendant is entitled to the return of his criminal bond unless the court declares the bond forfeited or the defendant expressly approves the application of the bond moneys to the payment of any penalty, fine, or court costs. R.C. 2937.40(B); R.C. 2937.41; *see* R.C. 2937.35; R.C. 2937.36; Ohio R. Crim. P. 46(M). A forfeited bond is distributed and accounted for in the same manner as a fine for the offense charged, except that the clerk may satisfy accrued costs in the case out of such forfeited bond moneys. R.C. 2937.36(A).

Finally, moneys deposited with the clerk of the court of common pleas pursuant to a court order remain in the possession of the clerk until the court instructs the clerk as to their disposition. The court of common pleas thus is responsible for indicating the person or entity entitled to the moneys deposited with the clerk pursuant to a court order.

Accordingly, moneys deposited with the clerk of the court of common pleas for a supersedeas or criminal bond or pursuant to a court order are held for the benefit of a person or entity other than the county unless the supersedeas bond is payable to the county, the criminal bond is forfeited and the county is entitled to the forfeited bond moneys, or the court requires moneys deposited with the clerk pursuant to a court order disbursed to the county. Thus, R.C. 2335.35 does not require the clerk of the court of common pleas to pay into the county treasury moneys deposited with him for a supersedeas or criminal bond or pursuant to a court order unless the supersedeas bond is payable to the county, the criminal bond is forfeited and the county is entitled to the forfeited bond moneys, or the court requires moneys deposited with the clerk pursuant to a court order disbursed to the county.

In light of the above, it is clear that R.C. 2335.25 and R.C. 2303.20 require the clerk of the court of common pleas to pay the interest earned on moneys deposited with him for supersedeas and criminal bonds or pursuant to a court order to the person or entity legally entitled to the principal that earned the interest.[3] *See West Am. Ins. Co. v. Dutt.* It is our conclusion, therefore, that interest earned on moneys deposited with the clerk of the court of common pleas for supersedeas and criminal bonds or pursuant to a court order and placed by the clerk into interest-bearing accounts at a local financial institution may not be paid into the county treasury. Rather, any interest earned on

---

[3] Because of the additional expense in accurately accounting for interest earned on a criminal bond and ensuring that the interest earned on such a bond is paid over to the proper person, the clerk of the court of common pleas may elect to deposit criminal bond moneys with banks or building and loan associations in accordance with R.C. 2335.25 in non-interest bearing accounts.

such moneys is to be paid to the person or entity legally entitled to the principal that earned the interest.[4]

Based on the foregoing, it is my opinion and you are advised that in accordance with the decision in *West Am. Ins. Co. v. Dutt*, 70 Ohio App. 3d 422, 591 N.E.2d 356 (Marion County 1990), interest earned on moneys deposited with the clerk of the court of common pleas in an interpleader action, for supersedeas and criminal bonds, or pursuant to a court order and placed by the clerk into interest-bearing accounts at a local financial institution may not be paid into the county treasury. Rather, any interest earned on such moneys is to be paid to the person or entity legally entitled to the principal that earned the interest.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

[4] If a supersedeas bond is payable to the county, a criminal bond is forfeited and the county is entitled to the forfeited bond moneys, or the court requires moneys deposited with the clerk pursuant to a court order disbursed to the county, the county is entitled to the interest earned and paid on any moneys deposited with the clerk for that supersedeas bond, criminal bond, or pursuant to the court order.

October 21, 1997

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
Courthouse
P.O. Box 490
Painesville, Ohio 44077

SYLLABUS: 97-050

In accordance with the decision in *West Am. Ins. Co. v. Dutt*, 70 Ohio App. 3d 422, 591 N.E.2d 356 (Marion County 1990), interest earned on moneys deposited with the clerk of the court of common pleas in an interpleader action, for supersedeas and criminal bonds, or pursuant to a court order and placed by the clerk into interest-bearing accounts at a local financial institution may not be paid into the county treasury. Rather, any interest earned on such moneys is to be paid to the person or entity legally entitled to the principal that earned the interest.