

January 22, 1996

OPINION NO. 96-003

The Honorable Anthony G. Pizza
Lucas County Prosecuting Attorney
Lucas County Courthouse
Toledo, Ohio 43624-1680

Dear Prosecutor Pizza:

You have requested an opinion regarding the county treasurer's use of certain computer-based technology to redeem county warrants that are presented to the treasurer pursuant to R.C. 321.16. R.C. 321.16 reads as follows:

When a warrant drawn on him as county treasurer by the county auditor is presented for payment, if there is money in the county treasury or depository to the credit of the fund on which it is drawn, and the warrant is endorsed by the payee thereof, the treasurer shall redeem it by payment of cash or by check on the depository.

A bank that cashes a warrant for one of its customers which is drawn on the county treasurer presents the warrant to the county treasurer for payment in accordance with R.C. 321.16. Typically this is accomplished by physical delivery of the actual warrant to the treasurer's office. This enables the treasurer or a member of his staff to examine and inspect the warrant to determine whether it will be honored and paid.

You have explained in your letter that Huntington National Bank has developed a computer-based system that enables the bank to present warrants to the county treasurer other than by physical delivery of the warrants. This is accomplished by means of a computer-generated optical image of the warrant. Using software designed for that purpose, the bank is able to create and store within its computers an image of a warrant it cashes for one of its customers. The image of the warrant may then be retrieved by the bank and made to appear upon the monitor screen of one or more of the bank's computers.

This system also permits the bank to electronically transmit the identical image to the computers of other parties who do not otherwise have access to the bank's internal computer network. In this instance the bank proposes to electronically transmit images of county warrants to the county treasurer's computers. The electronic transmissions will occur on a daily basis, and the county treasurer and his staff will be able to retrieve and view an image of each warrant on their computer monitor screens. Huntington National Bank proposes to use this type of electronic image delivery as the method by which it will henceforth present warrants to the county treasurer for payment under R.C. 321.16. In your letter you also have stated that, following their presentment by image delivery, physical delivery of the paper warrants will be made to the county treasurer on a weekly basis. You wish to know whether the county treasurer may use an image delivery system as described above when redeeming county warrants under R.C. 321.16.

The image delivery system described in your letter serves, *inter alia*, as a method of presentment used by banks and other financial institutions as part of the check payment and clearing process. Several provisions in R.C. Chapters 1303 (negotiable instruments) and 1304 (bank deposits and collections) address the concept of presentment and associated matters. R.C. Chapter 1303 is the Ohio analogue of Revised Article 3 of the Uniform Commercial Code (UCC), and R.C. Chapter 1304 corresponds to the UCC's Amended Article 4 and Article 4A. R.C. 1303.61(A) explains what is meant by "[p]resentment":

"Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank or to accept a draft made to the drawee.

R.C. 1303.61(B)(1)-(4) further set forth rules that address specific aspects of the presentment process. R.C. 1303.61(B) expressly provides, however, that those rules are subject to R.C. 1304.01-.40, agreement of the parties, clearing-house rules, and similar laws and rules. R.C. 1303.61(B)(1) addresses place and method of presentment, and the circumstances in which presentment is effective:

Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; *may be made by any commercially reasonable means, including an oral, written, or electronic communication*; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors.¹ (Emphasis and footnote added.)

¹ Several definitional provisions in R.C. Chapters 1303 and 1304 state the meaning of individual terms used in those chapters. As used in R.C. Chapter 1303, unless the context otherwise requires, "[a]cceptor" means a drawee who has accepted a draft, R.C. 1303.01(A)(1), "[d]rawee" means a person ordered in a draft to make payment, R.C. 1303.01(A)(2), "[d]rawer" means a person who signs or is identified in a draft as a person ordering payment, R.C. 1303.01(A)(3), "[m]aker"

Thus, subject to R.C. 1304.01-.40, agreement of the parties, clearing-house rules, and similar laws and rules, R.C. 1303.61(B)(1) permits presentment to be made by any commercially reasonable means, and electronic communication is designated as such.

R.C. 1304.08(A), which corresponds to § 4-110(a) of the UCC, addresses presentment that is made pursuant to an "[a]greement for electronic presentment":

"Agreement for electronic presentment" means an agreement, clearing house rule, or federal reserve regulation² or operating circular providing that presentment of an

means a person who signs or is identified in a note as a person undertaking to pay, R.C. 1303.01(A)(7), and "[o]rder" means a written instruction to pay money signed by the person giving the instruction, R.C. 1303.01(A)(8).

R.C. 1303.01(B)(1) provides that "[a]cceptance" has the same meaning as in R.C. 1303.46, and R.C. 1303.46(A) states that "[a]cceptance" means the drawee's signed agreement to pay the draft as presented. R.C. 1303.01(B)(5) provides that "check," "draft," "instrument," "negotiable instrument," and "note" have the same meanings as in R.C. 1303.03. "Instrument" means a negotiable instrument, R.C. 1303.03(B), and R.C. 1303.03(A) states that "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it meets all the requirements thereafter listed in R.C. 1303.03(A)(1)-(3). "Note" means an instrument that is a promise, R.C. 1303.03(E)(1), "[d]raft" means an instrument that is an order, R.C. 1303.03(E)(2), and "[c]heck" means either a draft, other than a documentary draft, payable on demand and drawn on a bank, R.C. 1303.03(F)(1), or a cashier's check or teller's check, R.C. 1303.03(F)(2).

R.C. 1303.01(B)(14) states that "[p]ayment" has the same meaning as in R.C. 1303.67, and R.C. 1303.67(A) states that, subject to R.C. 1303.67(B), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. R.C. 1303.01(C) provides that "bank" has the same meaning as in R.C. 1304.01, and R.C. 1304.01(B)(1) states that, as used in R.C. 1304.01-.40, "[b]ank" means a person engaged in the business of banking, including a savings bank, a savings and loan association, a credit union, or a trust company.

As used in R.C. 1304.01-.40, unless the context requires otherwise, "[d]raft" means a draft as defined in R.C. 1303.03 or an item, other than an instrument, that is an order, R.C. 1304.01(A)(7), "[i]tem" means an instrument or a promise or order to pay money handled by a bank for collection or payment, R.C. 1304.01(A)(9), "[a]cceptance" has the same meaning as in R.C. 1303.46, R.C. 1304.01(C)(1), "check" and "instrument" have the same meanings as in R.C. 1303.03, R.C. 1304.01(C)(3), and "order" and "promise" have the same meanings as in R.C. 1303.01, R.C. 1304.01(C)(4).

² Regulation CC of the Board of Governors of the Federal Reserve System comprises part 229 of title 12 (banks and banking) of the Code of Federal Regulations (1995). Subpart C of part 229 addresses the collection of checks by banks. Section 229.36 of subpart C governs the presentment and issuance of checks, and division (c) of that section expressly authorizes check truncation, which

item may be made by *transmission of an image* of an item or information describing the item rather than delivery of the item itself. The "agreement for electronic presentment" may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement. (Emphasis and footnote added.)

Presentment of an item pursuant to an agreement for electronic presentment is made when the presentment notice³ is received. R.C. 1304.08(B). If presentment is made by presentment notice, a reference to "item" or "check" in R.C. 1304.01-.40 means the presentment notice unless the context otherwise indicates. R.C. 1304.08(C).

Ohio law thus permits banking community participants to agree among themselves that instruments including checks, drafts, notes, and orders, *see* note one, *supra*, may be presented for payment by electronic image delivery. The issue posed by your inquiry, therefore, is whether the county treasurer may, consistent with his statutory responsibilities, be a party to such an agreement with a bank that, in the ordinary course of its business, presents county warrants to the treasurer for redemption pursuant to R.C. 321.16.

enables a bank to "present a check to a paying bank by transmission of information describing the check in accordance with an agreement with the paying bank." Appendix E to part 229 is entitled "Commentary," and represents the Board's interpretations of the various matters set forth in Regulation CC. That portion of Appendix E that addresses § 229.36 provides the following elaboration regarding the meaning and methods of check truncation:

(c) *Truncation.* Truncation includes a variety of procedures in which the physical check is held or delayed by the depository or collecting bank, and the information from the check is transmitted to the paying bank electronically. Presentment takes place when the paying bank receives the electronic transmission. This process has the potential to improve the efficiency of check processing, and express provision for truncation and electronic presentment is made in UCC 4-110 and 4-406(b). This paragraph allows truncation by agreement with the paying bank; however, such agreement may not prejudice the interests of prior parties to the check. For example, a truncation agreement may not extend the paying bank's time for return. Such an extension could damage the depository bank, which must make funds available to its customers under mandatory availability schedules.

³ The Official Comment that accompanies § 4-110 of the Uniform Commercial Code (UCC) states, in part, that "[u]nder imaging technology now under development, the presentment notice might be an image of the item," and the "electronic presentment agreement may provide that the item may be retained by a depository bank, other collecting bank, or even a customer of the depository bank, or it may provide that the item will follow the presentment notice."

The language of R.C. 321.16 makes clear that, following its presentment for payment, redemption of a warrant drawn on the county treasurer by the county auditor is accomplished by the treasurer's payment of cash or by check drawn on a depository holding public moneys of the county that are otherwise available for that purpose. *See* R.C. 135.32 (eligibility of institutions to become public depositories of county moneys); R.C. 135.33 (county commissioners' biennial designation of public depositories of active moneys of the county). *Black's Law Dictionary* 1585 (6th ed. 1990) defines a "[w]arrant" as "[a]n order by which the drawer authorizes one person to pay a particular sum of money," and it is apparent that this is the sense in which the term "warrant" is used in R.C. 321.16. *See also* R.C. 319.16 ("[t]he county auditor shall issue warrants on the county treasurer for all moneys payable from the county treasury, ... and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose, and on what fund").

Within the context of R.C. Chapters 1303 and 1304, it also is apparent that a warrant of the county auditor drawn on the county treasurer qualifies generally as an "instrument" as defined in R.C. 1303.03(B), and specifically as a "draft" as defined in R.C. 1303.03(E)(2) and R.C. 1304.01(A)(7). *See note one, supra*. Similarly, the county auditor qualifies as a "[d]rawer" as defined in R.C. 1303.01(A)(3), and the county treasurer qualifies as a "[d]rawee" as defined in R.C. 1303.01(A)(2). *Id.*

It follows, therefore, that a bank's presentment of warrants to a county treasurer for payment and the treasurer's subsequent redemption of those warrants by the payment of cash or by check pursuant to R.C. 321.16 are activities within the purview of R.C. 1303.61(A). This further means that a bank's presentment of such warrants may, in accordance with R.C. 1303.61(B)(1), be made by any commercially reasonable means, including an electronic communication. R.C. 1303.61(B) does provide, however, that a bank's use of an electronic communication as a method of presentment must be the subject of an agreement, and R.C. 1304.08(A) identifies what may serve as an agreement for that purpose. First, an "[a]greement for electronic presentment" may be a separate agreement between the parties to the presentment transaction. Alternatively, the agreement may take the form of a clearing house rule, or federal reserve regulation or operating circular. In either instance the "[a]greement for electronic presentment" must provide that "presentment of an item may be made by transmission of an image of an item or information describing the item rather than delivery of the item itself." R.C. 1304.08(A). In this instance it is proposed that the bank's electronic presentment of warrants to the county treasurer will be made by the transmission of an image of the warrants.

I have reviewed the relevant provisions of R.C. Chapters 1303 and 1304 set forth and summarized above, and I have considered as well the provisions of R.C. Chapter 321 that enumerate the duties and responsibilities of a county treasurer. That review and consideration lead me to conclude that a county treasurer may enter into an agreement for electronic presentment with a bank whereby the bank arranges to make presentment of county warrants to the treasurer by transmission of an image of the warrants rather than by physical delivery of the warrants. R.C. 1304.08 does not explicitly state which individuals or entities may be parties to an agreement for electronic presentment. Given the nature of the underlying transaction, one may reasonably conclude that one party to such an agreement may be a "bank," which R.C. 1304.01(B)(1) defines as "a person

engaged in the business of banking, including a savings bank, a savings and loan association, a credit union, or a trust company." Certainly it is apparent that this definition applies to a traditional banking institution such as the Huntington National Bank.

It is less certain, however, whether R.C. 1304.01(B)(1)'s definition of "[b]ank" also includes within its ambit a county treasurer and the office he administers and supervises. While it is likely that the statutory responsibilities of a county treasurer include the performance of financial activities or functions commonly undertaken by banks or other financial institutions, I question whether that fact suffices to qualify a county treasurer as "a person engaged in the business of banking," R.C. 1304.01(B)(1), for purposes of R.C. 1304.08. In this instance, however, I find it unnecessary to make a conclusive determination on that point. I have already stated that, for purposes of the presentment provisions of R.C. 1303.61, a warrant drawn on him as county treasurer qualifies the treasurer as a "[d]rawee," as that term is defined in R.C. 1303.01(A)(2). In my view, therefore, his status as a "[d]rawee" of county warrants makes the county treasurer eligible to be a party to an agreement for electronic presentment under R.C. 1304.08.

Further, as I have already indicated, R.C. 1304.08(A) provides that a federal reserve regulation or operating circular may serve as the "[a]greement for electronic presentment" that governs presentment transactions between two or more parties that are accomplished by means of an electronic communication such as image delivery. Regulation CC of the Federal Reserve System Board of Governors addresses the availability of bank funds and the collection of checks. Regulation CC has been promulgated as part 229 of title 12 (banks and banking) of the Code of Federal Regulations (1995). In note two, *supra*, I have set forth certain portions of that regulation that pertain to check truncation agreements and electronic presentment. Subpart C of part 229 specifically addresses the collection of checks by "banks," *see* 12 C.F.R. §§ 229.30-42, and § 229.2(e) enumerates which entities are meant by that term. Section 229.2(e) provides in particular that "the term *bank* also includes any person engaged in the business of banking, including a Federal Reserve Bank, a Federal Home Loan Bank, and a state or unit of general local government to the extent that the state or unit of general local government acts as a paying bank." An enumeration of each entity that is considered a "[p]aying bank" appears at § 229.2(z)(1)-(5). Section 229.2(z)(5) states that "[p]aying bank" means "[t]he state or unit of general local government on which a check is drawn and to which it is sent for payment or collection." Finally, § 229.2(k)(4) states that "[c]heck" means, *inter alia*, "[a] demand draft drawn on a state government or unit of general local government that is not payable through or at a bank."

Regulation CC thus includes as a "bank" a unit of general local government that acts as a "paying bank," and a unit of general local government acts as a "paying bank" whenever a demand draft is drawn upon it and sent to it for payment or collection. Accordingly, Regulation CC includes within its application a county treasurer who, pursuant to R.C. 321.16, redeems county warrants drawn on him by the payment of cash or by check drawn on a public depository. In R.C. 1304.08(A) the General Assembly has explicitly endorsed Regulation CC as an alternative form of electronic presentment agreement that banks may use and adapt for that purpose. In so doing the General Assembly has also communicated its intent that, in Ohio, a unit of general local government may, in the appropriate circumstances, be a party to an "[a]greement for electronic presentment."

The office of county treasurer is one such unit. Therefore, a county treasurer may be a party to an electronic presentment agreement with a bank whereby the bank agrees to make presentment of county warrants to the treasurer by transmission of an image of the warrants rather than by physical delivery of the warrants.

I also find the foregoing conclusion compatible with the provisions of R.C. 321.16. The language of R.C. 321.16 does not impose upon a county treasurer an explicit obligation to examine and verify the integrity of each county warrant that is presented to his office for redemption. I do not believe, however, that the statute's silence in that regard prevents a county treasurer from examining county warrants for the purpose of verifying their integrity and guarding against fraud or forgery.

It similarly follows that a county treasurer should be permitted to use those procedures or technologies he reasonably believes to be best suited to that purpose. R.C. 1304.35, for example, addresses in careful detail a bank customer's duty to discover and report an unauthorized signature or alteration in the case of an item that the bank has paid. R.C. 1304.35(A) specifically provides in that regard, however, that a bank "shall either return or make available to the customer the items paid or provide information in the statement of account *sufficient to allow the customer reasonably to identify the items paid.*" (Emphasis added.) R.C. 1304.35(A) corresponds to § 4-406(a) of the UCC, and the Official Comment to that section states that "[i]f the bank supplies its customer with an image of an item, it complies with this standard." This suggests to me that it is the judgment of the members of the National Conference of Commissioners on Uniform State Laws and the American Law Institute that, for the purposes of the banking community at large, image delivery technology has advanced to the point that it now enables a bank's customer to accurately and reliably detect and identify a forgery or alteration that appears upon an instrument. Given that fact, I see no reason to prohibit the use of this same image delivery technology by a county treasurer in the redemption of county warrants that a bank presents to him for payment pursuant to R.C. 321.16. *Cf. generally, e.g., State ex rel. Creager v. Billig*, 104 Ohio St. 380, 135 N.E. 605 (1922) (syllabus, paragraph one) (where a warrant drawn by a county auditor upon the county treasury to the payee "or order" shows on its face that it is transferable only by proper and genuine endorsement of the payee, the degree of care for which the auditor is responsible in the delivery of the warrant is only that ordinarily used in transactions of similar character under modern business rules and customs in the transfer and delivery of commercial paper).

In view of the foregoing, therefore, it is my opinion, and you are advised that pursuant to R.C. 1303.61 and R.C. 1304.08, a county treasurer may enter into an agreement for electronic presentment with a bank whereby the bank arranges to make presentment of county warrants to the treasurer for redemption by transmission of an image of the warrants rather than by physical delivery of the warrants.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

January 22, 1996

The Honorable Anthony G. Pizza
Lucas County Prosecuting Attorney
Lucas County Courthouse
Toledo, Ohio 43624-1680

SYLLABUS:

96-003

Pursuant to R.C. 1303.61 and R.C. 1304.08, a county treasurer may enter into an agreement for electronic presentment with a bank whereby the bank arranges to make presentment of county warrants to the treasurer for redemption by transmission of an image of the warrants rather than by physical delivery of the warrants.