

act as an interest-bearing fund constitute a general deposit without preference over general creditors although there are slight but not material or substantial irregularities in the designation of the bank under the depositary law."

It is my opinion, therefore, that county commissioners are not entitled to a preference in the liquidation of a legally selected active county depositary bank, for county moneys rightfully deposited therein.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

3125.

OXFORD VILLAGE—RIGHT TO LEVY AND COLLECT SPECIAL ASSESSMENTS AGAINST REALTY OWNED BY MIAMI UNIVERSITY WITHIN SUCH VILLAGE, UPHELD.

*SYLLABUS:*

*Under the provisions of Section 3812, of the General Code, the Village of Oxford has authority to levy and collect assessments for public improvements mentioned in said section, upon lands situated within such village, which are owned by Miami University.*

COLUMBUS, OHIO, April 7, 1931.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your communication requesting an opinion upon a question propounded to you by the village solicitor of Oxford, in a letter which you enclose. The question presented is whether the village of Oxford may levy and collect assessments against real property owned by Miami University within the village of Oxford, for the purposes of public improvements. The following is quoted from the letter of the solicitor, which relates to the facts:

"The Village of Oxford has located in its midst and within the village boundaries, the Miami University which is a state institution supported by state funds. Although in some respects it has functioned as a private institution, receiving state aid, it nevertheless is regarded as a state university.

The territory occupied by Miami University in the village almost comprises one-half of the village, and from time to time this non-taxable institution in our midst has caused a great burden and hardship upon the village proper because the village land owner's tax must contribute to the maintenance of the village sewage, lighting, etc., for a town of 5,000 persons when if the student population were excluded the village would only have a population of 2570.

In years past it was thought that since such institutions were tax exempt that they might also be exempt from special assessments for improvements of a public nature."

As suggested in the solicitor's letter, the act authorizing the establishment of Miami University is found in 7 O. L., 184. Without undertaking to discuss in detail the numerous provisions of the act, suffice it to say that such university is designated by the act as "a body politic and corporate, by the name of the president and trustees of the Miami University" as indicated by Section 3 of the act. Throughout the entire act

the entity created by said act is referred to as a "corporation". Section 9 of the act provides:

"BE IT FURTHER ENACTED, That the said Corporation shall have and keep one common seal which they may change, break or renew at pleasure, and that all deeds and instruments of writing, signed and delivered by the treasurer, and sealed with the corporation seal, by order of the president and trustees, shall, when made in their corporate name, be considered in law as the deed and act of the corporation, and the said corporation shall be capable of suing and being sued, pleading and being impleaded in any action, real, personal or mixed, and the same to prosecute or defend the final judgment and execution by the name of the president and trustees of the Miami University: PROVIDED, That whenever any suit shall be commenced against the said corporation, the process shall be a summons, and the service made by the officer leaving an attested copy of such process with the treasurer of the said corporation, and the said corporation shall be capable of having and holding in fee simple, or any less estate, by gift, grant, devise or otherwise, any lands or other estate, real or personal."

Section 10 of the act vests in said corporation, for the sole use, benefit and support of the university, certain lands vested in the state by an act of Congress, which is described therein. Under the terms of said grant, the corporation has authority to divide, subdivide and expose the same to sale and to lease for the term of ninety-nine years, renewable forever, such lands in accordance with the terms of the act.

Section 13 of the act provides in substance, that the lands vested in said corporation "shall be exempt from all state taxes".

In this connection, it may be noted that in Section 5349, General Code, enacted by the legislature in pursuance of Section 2 of Article XII of the Constitution, it is provided that:

"All lands connected with public institutions of learning not used with a view to profit, shall be exempt from taxation."

Also, Section 5351 of the General Code, provides:

"Real or personal property belonging exclusively to the state or United States, and public property used for a public purpose shall be exempt from taxation."

It is believed that the section last mentioned will have no application for the reason that from the terms of the act hereinbefore referred to, the lands of Miami University are not to be regarded as state lands notwithstanding they were donated by the state and serve a public purpose. However, Section 13 of the original act hereinbefore referred to, and Section 5349, General Code, do have application.

As suggested in the letter of the solicitor, a long line of opinions of Attorneys General and court decisions have indicated that while municipalities may levy assessments in connection with public improvements instituted by said municipality upon lands owned by boards of education within such municipality there was no provision of law authorizing the collection of said assessments. In other words, the undertaking to provide for such assessments was regarded as a vain and futile thing. However, as pointed out in the solicitor's letter, the case of *Jackson v. Board of Education*, 115 O. S., 368, completely changed the rule upon the subject. The syllabus of said case reads:

"1. Section 3812, General Code, confers upon a municipality general

authority to levy assessments for street improvements against property within such corporation belonging to a board of education and being used for school purposes, and no provision exists in the General Code of Ohio exempting such property from that general authority.

2. In the event of failure of such board of education to pay an assessment so levied, an action may be brought by the municipal corporation against such board of education to recover the amount of such assessment."

It is believed that, by analogy, the opinion last above quoted is applicable in connection with your inquiry. The only difficulty that arises, it is believed, is the holding of the Supreme Court in the case of *State ex rel. v. Cooper*, 123 O. S., 23 (Ohio Bar Rep., January 6, 1931), in which it was held as disclosed by the syllabus:

"1. The duty enjoined upon county treasurers by Section 3892, General Code, to collect installments of special assessments upon real estate in the same manner and at the same time as other taxes are collected, is mandatory.

2. Special assessments upon real estate for public improvements are taxes within the meaning of Sections 2655 and 3892, General Code.

3. By virtue of Section 2655, General Code, county treasurers are not permitted to receive payments of general taxes without at the same time receiving payment of installments of special assessments for public improvements certified to the county treasurer for collection."

Briefly, the above case held that the term "taxes", as used in Section 2655 of the General Code, included "assessments." However, it must be kept in mind that in the Cooper case, supra, the court was considering a different set of statutes from those under consideration in the Jackson case, supra.

It is therefore believed that in view of the specific holding in the Jackson case, it may not be said that the term "taxes" and "taxation" as used in tax exemption sections includes assessments.

In specific answer to the question propounded, it is my opinion that under the provisions of Section 3812 of the General Code, the village of Oxford has authority to levy and collect assessments for public improvements mentioned in said section, upon lands situated within such village, which are owned by Miami University.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3126.

CITY BOARD OF EDUCATION—BECOMING VILLAGE BOARD ON ACCOUNT OF FEDERAL CENSUS—COMPLETE NEW BOARD OF FIVE MEMBERS ELECTED AT NEXT PROPER ELECTION, EVEN THOUGH TERMS OF SOME CITY BOARD MEMBERS NOT EXPIRED.

**SYLLABUS:**

*When, by reason of the last preceding federal census, a city is reduced to a village, the members of the board of education heretofore elected as members of the city board of education should continue in office until succeeded by the members of a board of education of the new village school district, all five of whom should be elected at the next succeeding annual election*