

title in the premises in H. Pearl Legg, subject to taxes for the last half of the year 1926, and for the year 1927, which are unpaid and a lien.

The encumbrance certificate submitted bears No. 2041, is addressed to H. Pearl Legg, is properly certified by the Director of Finance under date of January 27, 1927, and is signed by Carl E. Steeb under date of January 25, 1927. Said certificate is for \$200.00, which is within the amount appropriated and not otherwise expended.

No deed is submitted. The abstract is returned to you together with an abstract of Lots Nos. 27, 28 and 29 of the same addition, which were left with me for purposes of comparison.

Respectfully,

EDWARD C. TURNER,  
 Attorney General.

1214.

COUNTY TREASURER—LIABLE FOR ALL PUBLIC FUNDS IN HIS HANDS  
 —LIABLE FOR STOLEN FUNDS.

*SYLLABUS:*

1. *A county treasurer and his bondsmen are liable for all funds which come into his hands for the use of the public.*
2. *The fact that funds were stolen from the county treasurer is no defense to an action for the recovery of such funds.*

COLUMBUS, OHIO, October 31, 1927.

HON. ELMER L. GODWIN, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

“Am submitting the following question for your opinion:

‘Is the county treasurer held responsible for funds that might be stolen from safe, or in case the treasurer is held up and robbed?’

This matter has been brought to my attention since the county will not pay for burglary insurance.”

This question is discussed in an opinion of this department, No. 527, issued on May 24, 1927, in which it was held:

“County commissioners have no authority to purchase and pay for burglary or hold-up insurance for the county treasurer or for any other county officer, nor have they authority to pay for insurance against forgery for the county treasurer.”

The above conclusion was reached for the reason that the law requires the county to protect itself against loss by requiring the treasurer to give bond conditioned that he shall account for all public monies which come into his possession.

Section 2639 of the General Code reads as follows:

"At the expiration of his term of office or on his resignation or removal from office, the county treasurer shall deliver to his successor, all monies, books, papers and other property in his possession as treasurer, and in case of the death or incapacity of the treasurer, they shall in like manner be delivered over by his legal representatives."

Section 2633 of the General Code, as amended in 112 Ohio Laws, 111, provides as follows:

"Before entering upon the duties of his office, the county treasurer shall give bond to the state in such sum as the commissioners direct with two or more bonding or surety companies as surety, or at his option, with four or more freehold sureties having real estate in the value of double the amount of the bond over and above all encumbrances to be approved by the commissioners and conditioned for the *payment*, according to law, of all monies which come into his hands, for state, county, township or other purposes. The expense or premium for such bond shall be paid by the commissioners and charged to the general fund of the county. Such bond, with the oath of office and the approval of the commissioners endorsed thereon, shall be deposited with the auditor of the county and by him carefully preserved in his office. Such bond shall be entered in full on the record of the proceedings of the commissioners, on the day when accepted and approved by them."

It will be noted that this section requires the county treasurer to give bond to secure to the county the payment, according to law, "of all monies which come into" the treasurer's hands for state, county, township or other purposes.

In construing the required provisions of the treasurer's bond, the Supreme Court of Ohio, in the case of *State of Ohio vs. Harper*, 6 O. S. 608, at 611, said that such "bond is a contract that he will not fail upon any account to do those acts." In that case the court specifically held:

"The felonious taking and carrying away the public monies in the custody of a county treasurer, without any fault or negligence on his part, does not discharge him and his sureties, and can not be set up as a defense to an action on his official bond. The responsibility of the treasurer in such case depends on his *contract*, and not on the law of *bailment*."

Our Ohio statutes relative to the treasurer's obligation were also construed by the United States Circuit Court of Appeals in the case of *Loeser vs. Alexander*, 176 Fed. Rep. 270, which was decided in 1910. In the opinion in that case the Court of Appeals said:

"Under the law of Ohio the county treasurer is an insurer of the safe keeping of the public monies and his bond is security therefor. Even the fact that public monies have been stolen from him is no defense to an action upon his bond for failure to account for and pay over such monies."

Therefore, answering your question specifically, it is my opinion that

- (1) A county treasurer and his bondsmen are liable for all funds which come into his hands for the use of the public.
- (2) The fact that funds were stolen from the county treasurer is no defense to an action for the recovery of such funds.

Respectfully,  
 EDWARD C. TURNER,  
*Attorney General.*