1548.

SERVICE CHARGES ON CHECKS—PAYABLE, WHEN—ACTIVE DEPOSITS UNDER DEPOSITORY CONTRACTS. (1936 O. A. G. No. 5659 followed).

SYLLABUS:

Except as provided in Section 2296-20, *General Code, wherein authority is granted to pay service charges for checks drawn on active deposits held in banks under depository contract, there is no authority permitting public officials to pay such charges out of public funds.* 1936 *Attorney General's Opinion No.* 5659, *approved and followed.*

COLUMBUS, OHIO, November 29, 1937.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: This is in answer to your recent letter which reads as follows:

> "Will you please furnish this office your opinion on the following?:
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> The banks of this city have recently instituted a system of charging three and one-half cents for each check written on those banks by their depositors. The question presents itself as to whether the banks can properly charge county officials for writing checks on county funds. For instance the County Probate Court has a separate fund on which it draws, by check, for its administration expenses. Can these banks legally make this charge against the Probate Court for every check drawn by the Court?
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> The second question: Assuming that the banks have this right to do so, how can this charge be paid, and if paid, what type of expense is it to be considered as being?"

Your letter does not clearly distinguish between the county officials, or the county funds, to be considered. At the same time, there is special emphasis on the probate judge, so for that reason the answer to your inquiry will be related to such points of interest.

County funds are supposed to be expended by the treasurer on warrant from the auditor. Section 2674, General Code, provides that:

> "No money shall be paid from the county treasury, or transferred to any person for disbursement, except on warrant of the county auditor * * *."

This view is also found in the commentator's and in judicial decisions.

> "All disbursements must be made by the county treasurer upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, unless the same is fixed by law." 11 O. J. 574, citing *State, ex rel. Lander* vs. *Prestien,* 16 O. C. (N. S.) 289, 29 O. D. N. P. 423.

It is common knowledge, of course, that many banks now make charges for cashing checks. When that system was begun for private general depositors, there naturally arose questions as to applicability of such charges to public funds. It is axiomatic that public funds may be disbursed only by clear authority of law and in compliance with statutory provisions. Because of such charges, therefore, questions similar to yours have been presented before.

An opinion of a former Attorney General, which appears as 1935 Opinions of Attorney General No. 4424, is somewhat in point. It was therein held that the Municipal Court of Ashtabula could not enter into a depository contract with a bank to cover funds in the hands of the clerk and agree to pay the usual service charge made by the bank. "This conclusion," it was stated, "was reached in spite of the fact that Section 1579-851, General Code, imposed a mandatory duty upon the clerk to deposit all moneys paid into court in the banks designated by the judge thereof."

The opinion, in part, reads:

> "With reference to the present inquiry, a still further question presents itself, namely, may a municipality expend public funds for such service charges? While a private individual may expend money for any purpose not expressly prohibited by law, it is necessary to find statutory authority for the expenditure of public money. Public officers have only those powers expressly granted by statute, together with such implied powers as are reasonably necessary to effectuate those expressed powers.
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>
> A somewhat analogous question was passed upon by me in an opinion to be found in Opinions of the Attorney General for 1934, Vol. II, page 1206. The first branch of the syllabus reads as follows:

'1. A county may not legally pay to a depository bank a collection fee on checks drawn upon other banks and received by the county treasurer for taxes, where the depository bank accepts such checks for collection only.'

The following statement appears at page 1208:

'Furthermore, public funds may be expended only in compliance with constitutional and statutory authority. I find no statutory authority for the county treasurer, or any other officer of the county, to pay to depository banks from public funds a collection fee on checks drawn upon other banks and accepted in payment of taxes.'

The conclusion and reasoning of this opinion would seem to be applicable to the present inquiry, inasmuch as there exists no statutory authority for the payment of these service charges."

That opinion was followed in another pertaining to service charges, which appeared as 1936 Attorney General's Opinion, No. 5659. The inquiry was almost identical with the one here considered, to the effect that:

"Various county officials have checking accounts but particularly the probate judge and clerk of courts draw quite a large number of checks monthly and this service charge amounts to a considerable sum. May this service charge be paid by the various officials as an expense for operating their offices, or must it be paid by the several officials personally? In other words, is there any way in which the county can legally pay such service charges?"

In that opinion my predecessor emphasized the recent enactment of Section 2288-1j, General Code, as specifically authorizing the official to rent a safety-deposit box. That was an express grant of authority. By expressly granting it, the Legislature is presumed to have withheld authority to make payment for other expenses. The opinion then concluded:

"In the light of the foregoing, it is my opinion that a county is without authority to pay service charges imposed by banks for the handling of checking accounts of probate judges and clerks of courts, although the only funds deposited in such accounts are those coming into the custody of such officers in their official capacity."

That opinion appears to be dispositive of your question. It was given June 1, 1936. Since that date the Legislature passed the bill, effective April 16, 1937, which includes Section 2296-20, General Code, and provides specifically for payment of service charges on county funds in banks under depository contracts. It reads:

> "Interest on *inactive deposits* shall be paid by the public depository to the treasurer quarterly, computing the time of payment from the date of deposit, or at any time when withdrawals are made or the account is closed. *No service charge shall be made against any active deposit, or collected from or paid by any treasurer unless such service charge or charges are the same as those which are customarily imposed by institutions receiving money on deposit subject to check in the city or village in which the public depository of such deposit is located, in which event the treasurer is hereby authorized to pay the same.*" (Italics, the writer's.)

Also there was passed the law which became effective September 2, 1935 (manifestly after banks had begun to make service charges), and which was referred to by the Attorney General in the dispositive opinion cited above. (Sections 2288-1c and 2288-1j, General Code). By those statutes the Legislature, through clear intent, provided for hypothecation of securities to cover funds coming into the hands of the officials enumerated. It also clearly declared that if because of the requirement for security, above the amount of federal insurance, banks were unwilling to accept such deposits, the official holding funds had authority to rent a safety deposit box and to pay for it from his fee funds.

The Legislature thus clearly expressed itself as to authority to pay for safety deposit boxes, while by its silence it just as clearly gave no authority for other expenditures. If the Legislature had intended to make provision for payment of service charges on such funds as those you have in mind, it could easily have used an exact expression to that effect. The rule of statutory interpretation is perfectly clear. *Expressio unius est exclusio alterius.* The Legislature, in fact, was thus close to two opportunities to express itself on the point in question, but it kept silent.

Manifestly, therefore, Section 2296-20 covers the only instance in which, by definite statutory provision, charges for checks drawn on public funds may be paid. Moreover, it is to be noted that such payments as are specifically authorized pertain solely to *active accounts* under depository contract. Consequently, in all other instances the stat-

utes must be regarded as silent, and the earlier opinion cited above prevails.

In view of the foregoing and in specific answer to your question, it is my opinion that:

1. Under Section 2296-20, General Code, there is authority only to pay service charges for checks drawn on active deposits held in bank under depository contract.

2. There is no authority granted to county officials, including the probate judge, to pay such charges for checks drawn on funds coming into their hands which they have for safe-keeping, but not under depisotory contract, entrusted to a bank.

Respectfully,
HERBERT S. DUFFY,
Attorney General.

1549.

APPROVAL—BONDS OF NIMISHILLEN TOWNSHIP RURAL SCHOOL DISTRICT, STARK COUNTY, OHIO, $108,000.00.

COLUMBUS, OHIO, November 29, 1937.

The Industrial Commission of Ohio, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of Nimishillen Twp. Rural School Dist., Stark County, Ohio, $108,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school bonds dated October 1, 1937, bearing interest at the rate of 3¼% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,
HERBERT S. DUFFY,
Attorney General.