from making such bank its agent for the collection of taxes on deposits in the bank. Upon this point, the Supreme Court of the United States in the case of *Clement National Bank* vs. *Vermont, supra,* said:

> "The bank was authorized to receive deposits. Arising from these deposits were credits to the depositors, forming part of their property and subject to the taxing power of the State. It cannot be doubted that the property being taxable, the State could provide, in order to secure the collection of a valid tax upon such credits, for garnishment or trustee process against the bank or in effect constitute the bank its agent to collect the tax from the individual depositors."

It appears therefore that at the time the Ross County National Bank closed its doors and was taken over by the receiver for purposes of liquidation, this bank as the agent of the state had in its possession moneys and assets representing deposits as of November 24, 1931, upon which the state had a lien for the tax on such deposits, which taxes it was and is the duty of this bank to pay whether the bank deducted such taxes from the deposits made by the respective depositors in the manner provided for by section 5673-2, General Code, or not. The fact that the property and assets of this bank are in the hands of a receiver does not affect the situation. Touching this point, the court in its opinion in the case of *Rosenblatt* vs. *Johnston,* 104 U. S. 462, said:

> "Such property and assets, in legal contemplation, still belong to the bank, though in the hands of a receiver, to be administered under the law. The bank did not cease to exist on the appointment of the receiver. Its corporate capacity continues until its affairs are finally wound up and its assets distributed."

It follows that the receiver has the same obligation to pay these taxes on deposits as the bank had to pay the same at and prior to the time that its property and assets were taken over for liquidation. I am of the opinion therefore that so much of the claim referred to in your communication as represents taxes assessed on deposits in said bank in the manner provided by the sections of the General Code above referred to is a provable claim against the receiver, and is payable out of moneys in the hands of the receiver otherwise due and payable to the several depositors making the deposits subject to taxes.

Respectfully,
JOHN W. BRICKER,
Attorney General.

203.

CIVIL SERVICE — CITY REVERTING TO A VILLAGE — CITY CIVIL SERVICE COMMISSION AND EMPLOYES UNDER CLASSIFIED SERVICE AUTOMATICALLY LOSE THEIR STATUS.

SYLLABUS:

1. *The civil service commission of a city ceases to exist and function after a city reverts to a village form of government by operation of law.*

2. *The employes in the classified service of a city which reverts to a village form of government cease to be subject to and protected by the civil service laws of this state on the transition from one form of government to another.*

3. *The protection given by the tenure of office provisions of section* 486-17a *to an employe in the classified service of a city disappears when a city reverts to a village form of government.*

COLUMBUS, OHIO, March 10, 1933.

State Civil Service Commission, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your letter of recent date which reads as follows:

> "Article XV, Section 10 of the State Constitution provides as follows:—
>
> 'Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.'
>
> The Civil Service Laws of Ohio provide throughout for appointments and promotions in the civil service of the state, the several counties, cities and city school districts thereof.
>
> It is clear that the Civil Service Laws do not in the original instances apply to villages or other subdivisions not mentioned above, but the following unusual situation presents itself, upon which we respectfully request your opinion.
>
> Dennison, Ohio, while a city, established a city civil service commission and complied with all of the provisions of the Civil Service Laws. Employes appointed in accordance therewith were entitled to the tenure of office outlined under Section 486-17-a which is during good behavior and efficient service. Subsequently Dennison became a village. What then is the status of those classified employes who were appointed in full compliance with the provisions of the Civil Service Laws, and who continue to accupy their positions after the city changes to a village? Also what are the requirements for new applicants? Does the Civil Service Commission continue to function and apply the Civil Service Laws of Ohio?"

It must be assumed from your letter that the transition from a city to a village form of government has occurred and that the officers of the city of Dennison are no longer in office, having continued in office only until the next regular election which was on November 3, 1931. Sections 3498 and 3499, General Code, are pertinent to your inquiry and read as follows:

> Sec. 3498. "When the result of any future federal census is officially made known to the secretary of state, he forthwith shall issue a proclamation, stating the names of all municipal corporations having a population of five thousand or more, and the names of all municipal corporations having a population of less than five thousand, together with the population of all such corporations. A copy of the proclamation shall forthwith be sent to the mayor of each municipal corporation, which copy shall be forthwith transmitted to council, read therein and made a part

of the records thereof. From and after thirty days after the issuance of such proclamation each municipal corporation shall be a city or village, in accordance with the provisions of this title."

Sec. 3499. "Officers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new corporation at the next regular election, and the ordinances thereof not inconsistent with the laws relating to the new corporation shall continue in force until changed or repealed."

It is to be noted that the legislature in the last sentence in section 3498 specifically provides that thirty days after the issuance of the proclamation of the population by the secretary of state "each municipal corporation shall be a city or village".

Although the transition from a city to a village form of government or vice versa occurs thirty days after the secretary of state issues the proclamation required by section 3498, it does not follow that the officers of either a city or village are invested with the powers, duties and functions of the political entity which results on the transition from one form of government to another. It was held by the Supreme Court of Ohio in the third paragraph of the syllabus in the case of *State, ex rel. Heffernan, et al.,* vs. *Serp, et al.,* 125 O. S. 87, that:

"It is the true intent and meaning of Section 3499, General Code, that village officers shall continue in office, with the powers and duties only of village officers until the first regular election after the proclamation of the secretary of state has been filed with the mayor of the municipality as provided by Section 3498, General Code."

It is apparent from the holding in that case that, whenever a transition in the form of government occurs as provided by sections 3498 and 3499, the officers of either city or village continue in office with the powers and duties of the office in the political entity to which they were elected until the next regular election and that such officers are not invested with the powers, duties and functions of the political entity which results from the transition.

It has been repeatedly held in this state that, by virtue of the provisions of section 10 of article XV of the Constitution of the State of Ohio and section 486-8, General Code, the provisions of the civil service law apply only to the state, cities, counties and city school districts and do not apply to villages. See *State, ex rel. Heffernan, et al.,* vs. *Serp, et al., supra,* page 88; 7 O. Jur. 541; Opinions of the Attorney General, 1916, page 275; Opinions of the Attorney General, 1916, page 1187; Opinions of the Attorney General, 1918, page 1594; Opinions of the Attorney General, 1919, page 217; Opinions of the Attorney General, 1927, page 1006; Opinions of the Attorney General, 1930, page 1351. In other words, the classified service of this state includes all persons in the employ of the state, the several counties, cities and city school districts only, since the legislature has not seen fit to include villages as one of the political subdivisions to be subject to the provisions of the civil service law. There being no provision for civil service in villages, it follows that the civil service law of this state does not apply to persons employed by villages, nor does a mayor of a village have authority to appoint a municipal civil service commission. The power to appoint a municipal civil service commission has been granted by the legislature to the mayor of a city only, by virtue of the provisions of section 486-19, General Code, which reads in part as follows:

> "The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district in which such city is located, provided, however, that members of existing municipal commissions shall continue in office for the terms for which they have been appointed and until their successors are appointed and have qualified."

It is therefore obvious that when the City of Dennison completely reverted to a village form of government the municipal civil service commission of Dennison ceased to exist, there being no authority for the continuation of that administrative body after Dennison ceased to be a city and had reverted to a village form of government. The civil service commission of Dennison could not continue to apply the civil service laws of Ohio after Dennison reverted to a village form of government, since the mayor of the village of Dennison cannot appoint a civil service commission nor could the civil service commission of the City of Dennison continue to function after Dennison ceased to be a city.

It must be borne in mind that civil service laws are designed to secure the appointment of competent public servants and to protect them in their employment from attacks on personal grounds. See *Curtis* vs. *State, ex rel.,* 108 O. S. 292; and *Essinger* vs. *City,* 275 Pa. 408. The purpose of civil service in regard to appointments to positions in the classified service of the enumerated governmental units was to give something like permanency of tenure to the employes thereof and to put an end to the practice of changing employes without cause and for political reasons only, whenever the appointing authority was changed. However, the civil service law was not designed to perpetuate the employment of classified service employes regardless of whether the governmental unit by whom they are employed continues to come within the purview of a civil service law. There is no provision in the civil service law of this state which evinces an intention on the part of the legislature to perpetuate and retain the employment of persons in the classified service even when the political entity by whom they were employed no longer comes within the scope of the civil service law. The permanency of tenure provided by section 486-17a, General Code, which reads in part as follows:

> "The tenure of every officer, employe or subordinate in the classified service of the state, the counties, cities and city school districts thereof, holding a position under the provisions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office."

applies only to positions in the classified service of the state, the several counties, cities and city school districts and in no other political units. In other words, the protection against removal accorded to employes in the classified service by section 486-17a is limited to persons employed by the state, the several counties, cities and city school districts. Section 486-17a was not intended to prevent a

position in the classified service of a city from being taken from such status by the operation of law through the reversion of a city to a village form of government. The fact that a person is in the classified service does not mean that he will forever continue in that status, since there is no provision in the law which prevents the abolishment of a position in the classified service either by the operation of law, by an act of law or by the appointing authority when done in good faith. The protection given by the tenure of office provisions of section 486-17a to an employe in the classified service of a city disappears when a city reverts to a village form of government and the employes of such a village are not subject to the provisions of the civil service law since there is no provision in that law which permits or requires the employes of a village to be appointed or retained as provided by the civil service law.

Specifically answering your inquiry, I am of the opinion that:

1. The civil service commission of a city ceases to exist and function after a city reverts to a village form of government by operation of law.

2. The employes in the classified service of a city which reverts to a village form of government cease to be subject to and protected by the civil service laws of this state on the transition from one form of government to another.

3. The protection given by the tenure of office provisions of section 486-17a to an employe in the classified service of a city disappears when a city reverts to a village form of government.

Respectfully,
JOHN W. BRICKER,
Attorney General.

204.

CHECKS—INTEREST—DEPOSIT OF CHECKS BY PUBLIC AUTHORITIES—LONG ESTABLISHED CUSTOM OF COMPUTING INTEREST CONSIDERED PART OF DEPOSITORY CONTRACT.

SYLLABUS:

When there is a definite, long established custom of treating as cash checks deposited either alone, or with cash, in a depository bank by public authorities, and crediting them to the public depositor's account as cash, subject to the right reserved in the regulations of the bank to debit such accounts in the event such checks are not paid in due course such custom or usage is a part of the contract between the bank and the public depositor and the term "average daily balance" as used in Section 2716, General Code, includes the amount of such checks so credited.

COLUMBUS, OHIO, March 11, 1933.

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

GENTLEMEN:—Your recent request for opinion reads:

"Under date of April 23rd, 1927, former Attorney General Edward C. Turner held that when banks had duly entered into depository contracts with a municipality for the deposit of public funds, with full knowl-