

"Township or billage funds deposited in a bank without attempting to comply with the provisions of the depository act, but solely on authority of the treasurer, are special deposits and entitled to preference out of cash remaining on hand in the bank."

The treasurer of Liberty township has deposited the funds of the township in the Bank of Leipsic, after what was in exact no attempt to comply with the provisions of the depository act, and in the opinion in the case just referred to above it is said:

"In the consideration of the status of public funds in the hands of a public treasurer we may start with the proposition that such treasurer, under the clearly established law of this state, is a mere custodian of the funds and has no authority by virtue of his office to loan or invest them. *Eshelby vs. Cincinnati Board of Education*, 66 Ohio St., 71."

In *Eshelby vs. Board of Education*, the interest earned by the funds of the board was claimed by the treasurer, *Eshelby*, as his own. The court held that the increment of the funds held by the custodian of funds belonging to another follows the fund, that is, the interest earned by the funds of the board of education belonged to that fund and was the property of the school board.

Again, in *Newark vs. National Bank*, 15 O. C. C. (n. s.) 276, it is held that in an action by a municipal corporation against a bank for the recovery of interest received by the bank on the funds belonging to the municipality, where the bank knew of the ownership and the trust character of the funds, an accounting of the profits so received may be required of the bank. (Affirmed, 90 O. S. 470.)

It is evident from your statement of facts that the funds deposited by the treasurer with the Bank of Leipsic were known by it to be funds of Liberty township, delivered to the bank under circumstances which amounted to a failure in an attempt to create a depository. No reason is seen why an accounting may not be required of this bank for the increment of the township funds, and it is believed this is an answer to your second question in so far as the bank is concerned.

The liability of the township trustees in failing to provide a depository for the township funds is sufficiently set out in section 3326 G. C., which has been referred to herein above and need not be again restated. So, also, the liability of the township treasurer under said section has been referred to, and what has been said is a sufficient answer to the second part of your second inquiry.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1932.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS,
COSHOCTON COUNTY, OHIO.

COLUMBUS, OHIO, March 22, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*