

1884.

COMPROMISE OF FINDING AGAINST NATIONAL BANK OF A.—
APPROVED.

SYLLABUS:

Proposed settlement of finding of Bureau of Inspection and Supervision of Public Offices against the National Bank of A. considered and same approved subject to recommendation to that effect by the Auditor of State.

COLUMBUS, OHIO, March 21, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your communication of recent date in which you advise that your department has made a finding for recovery against the National Bank of A., in the sum of \$22,979.08, said bank being one of the depositary banks of the city of A. and the amount of said finding being a shortage due to alleged defalcations of one A. E. W., who, prior to the 4th day of January, 1928, was at the same time treasurer of the city of A. and assistant cashier of said bank.

With said communication you enclose a copy of a resolution adopted by the council of the city of A., authorizing the city solicitor to enter into a settlement of the claim of the city of A. for the sum of \$20,000 and to make and execute the necessary papers and releases to carry said settlement into effect. You submit this proposed settlement to this department under the provisions of Section 286, General Code, which, *inter alia*, provides that

“No claim for money or property found in any such report to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions, by any board or officer or by order of any court unless the Attorney General shall first give his written approval thereof.”

One of the considerations reflecting on the question of whether or not the proposed settlement should be approved is whether the monies making up the aggregate amount of this shortage were purloined by said A. E. W. as monies of the city of A., in his capacity as treasurer of said city, or were taken by him as monies of said National Bank of A. in his capacity as assistant cashier of said bank. If, as is claimed by the bank, these monies came into the hands of said A. E. W. as treasurer of the city of A., and were taken and converted by him to his own use as such city treasurer, it would seem there should be no hesitation in approving the proposed settlement, inasmuch as the bond of said city treasurer, as I am advised, was only \$10,000 and he is possessed of little or no property out of which the balance of the claim can be made. It seems from the resolution adopted by the council of the city of A., above referred to, that said council entertained the view that this money was taken by said A. E. W. in his capacity of city treasurer. In this connection said resolution contains a recital showing that the city council construed the report of the state examiner as showing “said A. E. W. to be short in his accounts with said city as said city treasurer in the sum of \$22,979.08,” and said resolution refers to the claim of the city of A., by reason of said shortage, as one against “A. E. W. (former city treasurer).”

Indicating to some extent the means adopted and used by said A. E. W. in converting to his own use the monies making up this shortage, the following is stated in the report of the examiner:

“On the 19th day of September, 1927, your examiner requested from Mr. A. E. W., assistant cashier of the National Bank of A., a certified bank

statement of all funds belonging to the city of A. and on deposit in said bank as of the close of business September 17, 1927, and received the statement, shown elsewhere in this report, signed by one P. K. S., Teller, that the City of A. Account had a balance of \$137,768.98.

It now appears that said statement did not contain the true bank balance of said date, as the bank's records show the balance to be \$116,768.98 or \$21,000.00 less than the statement. It further appears, and it is stated by the National Bank of A., that the signature on said certificate is not that of the bank teller.

By reason of this and preceding purporting certifications of said bank balances the assistant cashier was able to cover up his defalcation of bank funds.

It is alleged that the money was obtained from the bank by the assistant cashier by the use of counter check charging 'City of A. Account' for purported payment of bonds and coupons wherein none were so paid. The charge slips or counter checks being used for convenience of said bank in charging account where no checks were issued by the city auditor, sinking fund trustees or by the Treasurer of the City of A.

The bonds and coupons together with the counter checks were by the bank turned over to or handed by Mr. A. E. W., treasurer of said city, as well as assistant cashier of said bank. Mr. W. could then turn over the paid bonds and coupons, with an itemized statement, to the secretary of the sinking fund trustees. The secretary after verifying the correctness of said statement made proper entry in the sinking fund records of the disbursement of the amount so paid by the depository and returned through their assistant cashier. The alleged counter checks issued by the said assistant cashier wherein no bonds or coupons were paid, together with other counter checks, were destroyed by said assistant cashier."

It seems from this statement that bonds of the city of A. and interest coupons thereon when presented for payment were uniformly paid for by the check of said A. E. W. as city treasurer instead of the attested check of the president and two members of the board of sinking fund trustees, as required by Section 4518, General Code. It is probable that this practice on the part of the city treasurer was known both to the city officials and to those of the bank. In any event, it is quite certain that this practice afforded said A. E. W. the opportunity taken by him to present and cash checks drawn on said depository bank by him as city treasurer for the ostensible purpose of paying for city bonds and coupons when in fact no bonds and coupons were presented for payment, with the result that said A. E. W., by cashing such checks, would convert the money to his own use. In short, it seems to me that it was largely due to the fact that said A. E. W. was both city treasurer and assistant cashier in this depository bank that enabled him to carry on the operations by which he obtained this money for his own use and that it was probably through his connection with the bank that he was able to cover up the same by false reports with respect to bank balances of monies of the city on hand in said bank from time to time.

In view of the fact that this proposed settlement has the approval of the council of the city of A. and, as you advise, that of the city solicitor as well, and in view of the hazards of litigation in an action to recover on your finding made against the National Bank of A., I will approve said proposed settlement upon receipt of recommendation to that effect from the Auditor of State.

Respectfully,
EDWARD C. TURNER,
Attorney General.