

There are numerous other cases holding that a public deposit in violation of state law constitutes a trust fund entitling the public depositor to recover from the receiver of the bank the amount of such fund. *Merchants National Bank vs. School District No. 8, supra*; *Spokane Co. vs. First National Bank*, 68 Fed. 979; *Smith vs. Mottley*, 150 Fed. 266 (C. C. A. 6th); *Board of Commissioners of Crawford County vs. Strawn*, 157 Fed. 49; 15 L. R. A. (N. S.) 1100 (C. C. A. 6th); *In re: J. M. Acheson Company*, 170 Fed. 427; *Titlow vs. McCormick*, 236 Fed. 209.

The Crawford County case, *supra*, involved a deposit in a national bank of county funds illegally under the law of Ohio as it then existed.

In the light of these authorities, it is my opinion that the Dennison National Bank has never acquired title to the funds deposited by the deputy commissioner of motor vehicles but holds such funds in trust. It would therefore be improper for you to sign the Creditor's Waiver Agreement, the State of Ohio not being a creditor, but being entitled to the full amount of the deposit, including the amount of the unpaid checks in question, provided that the trust funds can be followed. If before the State is paid the amount of its special deposit all the assets of the Dennison National Bank are transferred to a new national bank, such new bank will not acquire title to the funds held in trust for the State of Ohio and will be liable for the payment of such funds.

I therefore advise you to inform the conservator in charge of the Dennison National Bank that the State of Ohio demands payment in full of the deposit of your deputy commissioner.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1527.

OFFICES COMPATIBLE—CLERK TO HEALTH COMMISSIONER OF
GENERAL HEALTH DISTRICT MAY HOLD OFFICES OF VILLAGE
MAYOR AND JUSTICE OF PEACE WHEN.

SYLLABUS:

A clerk to a health commissioner of a general health district who is not a member of the board of health of such district may hold the offices of village mayor and justice of the peace, if such clerk is not hired for whole time service under the provisions of section 1261-22, General Code, and it is physically possible to transact the duties of such clerkship and offices simultaneously.

COLUMBUS, OHIO, September 9, 1933.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

“Your opinion is requested as to whether there is any objection to the same man holding at the same time, the offices of Clerk to the Health Commissioner, Mayor and Justice of the Peace.”

Since receiving the foregoing communication, I have been further informed by you that the clerk to the health commissioner, involved in your question, is clerk to the health commissioner of a general health district and the mayor involved in your query is a village mayor. I assume that the clerk to the health commissioner, who is also a village mayor is not a member of the board of health of the general health district.

At the outset, I may say that I find no express constitutional or statutory provisions to prevent a person from holding this position and these offices simultaneously. Section 1261-22, General Code, however, provides in part:

“In any general health district the district board of health may upon the recommendation of the health commissioner appoint for whole or part time service a public health nurse and a *clerk* and such additional public health nurses, physicians and other persons, as may be necessary for the proper conduct of its work. * * *” (Italics the writer’s.)

It is evident from the foregoing section that the clerk to the health commissioner may be hired by the district board of health for whole or part time service. If the clerk is hired for whole time service, it seems clear that said clerk could not occupy the offices of village mayor and justice of the peace at the same time, for it was held in the case of *State ex rel. vs. Gebert*, 12 C. C. (N. S.), 274, at page 275:

“Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or *when it is physically impossible for one person to discharge the duties of both.*” (Italics the writer’s.)

Probably if the clerk is hired for whole time service, it would not be physically possible to transact the duties of the offices of village mayor and justice of the peace at the same time.

However, if the clerk is hired for part time service, it would be a question of fact whether or not it is physically possible for the part time clerk to perform the duties of the position of clerk and offices of village mayor and justice of the peace simultaneously.

It has been held that a health district is a separate political subdivision of the state. See *Board of Health vs. State, ex rel.*, 40 App., 77. Moreover, the duties of a clerk are ministerial. Hence, the position of part time clerk can not be said to be subordinate to, or in any way a check upon, the offices of village mayor and justice of the peace in a township within the common law rule as laid down in the Gebert case.

As for the question of whether or not one person may hold the offices of village mayor and justice of the peace simultaneously, I may refer you to two former opinions of this office. The latest of these opinions is reported in Opinions of the Attorney General for 1917, volume III, page 2102. The syllabus of such opinion reads:

“The same person can be elected to and hold the offices of mayor and justice of the peace, provided the duties of such offices are not so numerous as to render the performance of same physically impossible.”

The other opinion is reported in Annual Report of the Attorney General for 1913, volume I, page 284. While there was no syllabus to this opinion, the

body of said opinion shows that a similar conclusion to that of the 1917 opinion was reached.

In view of the foregoing, I am of the opinion in specific answer to your question that a clerk to a health commissioner of a general health district may hold the offices of village mayor and justice of the peace, if such clerk is not hired for whole time service under the provisions of section 1261-22, General Code, and it is physically possible to transact the duties of such clerkship and offices simultaneously.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1528.

APPROVAL, NOTES OF SEBRING EXEMPTED VILLAGE SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$15,927.00.

COLUMBUS, OHIO, September 9, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1529.

APPROVAL, BONDS OF CITY OF MAPLE HEIGHTS, CUYAHOGA COUNTY, OHIO—\$385,000.00.

COLUMBUS, OHIO, September 9, 1933.

Industrial Commission of Ohio, Columbus, Ohio.

1530.

APPROVAL, NOTES OF BRISTOL RURAL SCHOOL DISTRICT, MORGAN COUNTY, OHIO—\$3,167.00.

COLUMBUS, OHIO, September 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1531.

APPROVAL, NOTES OF NEWTONSVILLE VILLAGE SCHOOL DISTRICT, CLERMONT COUNTY, OHIO—\$4,739.00.

COLUMBUS, OHIO, September 11, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.