It has been held that the dissolution or abolition of a school district is effective immediately upon the completion of the statutory proceedings therefor. *Cousey* vs. *Guilford Co.*, 192 N. C., 298; *State* vs. *Goff*, 110 Oreg., 349, 218 Pac., 556.

The Perry Rural School District and the Laurelville Village School District were dissolved and ceased to exist and their respective boards of education were abolished immediately upon the completion of the proceedings taken by the Hocking County Board of Education to consolidate them into a new district which apparently was accomplished sometime prior to election day—November 6, 1934. It follows that the vote to authorize additional levies of taxes, as taken, was a pure nullity in all the territory formerly comprised in the two districts which at the time of the election did not exist.

Authority for the submission to the electors of a subdivision, of the proposition of levying taxes outside the constitutional and statutory limitations, is found in Sections 5625-15 and 5625-17, General Code. In Section 5625-17, General Code, the form of the ballot to be used at such an election is prescribed as follows:

> "An additional tax for the benefit of (name of subdivision) . . . for the purpose, etc. * *"

Inasmuch as the taxing authority of the new district formed from the Perry and Laurelville Districts did not provide for the submission of the question of levying additional taxes within the new district, and could not have done so because of the limitation of time, the ballots used (the only ones that could have been used) purported to provide for the authorization of an additional tax in Perry Rural District and Laurelville Village District, which districts were nonexistent at the time the vote was taken. The vote, even if it had been unanimously affirmative, could have no effect whatever, as it could not authorize a levy of taxes in a subdivision that had previously been abolished and was not at the time the vote was taken, in existence.

I am therefore of the opinion in specific answer to your question that, no tax may be levied or extended on the duplicate in addition to the limitation of ten mills as contained in Section 2 of Article XII of the Constitution of Ohio, by reason of the vote taken within the new school district created by the consolidation of the Perry Rural School District and the Laurelville Village School District in Hocking County.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3618.

DEPOSITORY—PAYMENT OF INTEREST UPON DEMAND DEPOSIT BY MUNICIPAL DEPOSITORY ALSO MEMBER OF FEDERAL RESERVE SYSTEM.

SYLLABUS:

Although a separate account for the payment of coupons and redemptions of bonds is maintained in a municipal depository, all such deposits are made pursuant

to either Sections 4295 or 4515, General Code, both of which are State laws requiring the payment of interest on public funds, and hence not within the inhibition of Section 11 (b), Banking Act of 1933, which forbids member banks of the Federal Reserve System from paying interest upon demand deposits.

COLUMBUS, OHIO, December 12, 1934.

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

GENTLEMEN:—I have your request for my opinion which reads:

> "Your predecessor, in Opinion No. 2901, page 153 of the 1931 Opinions, held as follows:
>
> '1. When the bonds and coupons of a municipality are payable at a depository of such municipality, interest must be paid by such bank upon the money placed in such bond and coupon account.
>
> 2. Where a bond and coupon redemption account of a municipality remains at a bank after it has ceased to be a depository for such municipality, interest is not thereafter payable thereon until such bank defaults after demand for payment of the funds so held.'
>
> Many depository banks contend that under present federal statutes they are prohibited from paying interest on the bond and coupon account, for the reason that this is a trust account, claiming that when funds are transferred to a bond and coupon account the money then belongs to the bond holders.
>
> Will you kindly advise us on this matter, either giving us a new opinion or affirming the opinion above referred to."

Sections 4515 and 4516, General Code, provide that the Sinking Fund trustees of a municipality shall create a depository for "all sums held in reserve". The contract must be awarded to the bank offering "the highest rate of interest" and meeting the other requirements contained in Section 4515, as amended by H. B. No. 55, Second Special Session, 90th General Assembly.

Section 4516-1, General Code, reads:

> "The provisions of sections 4515 and 4516 of the general code shall not apply where sums held in reserve, by trustees of the sinking fund, are deposited in the city treasury, so as to become part of the general city balance to be deposited in banks as otherwise provided by law."

Where such sums are deposited in the treasury, they may be deposited in a municipal depository under Section 4295, General Code, which authorizes the council to "provide by ordinance for the deposit of all public moneys coming into the hands of the treasurer * * *." The interest requirement under such section is the same as that contained in Section 4515, *supra.*

Likewise, if the bonds in question were issued on or after January 1, 1922, Section 4295, supra, authorizes the deposit of monies comprising the "bond payment fund" in a municipal depository. See Sec. 2295-14, General Code.

The first branch of the syllabus of the 1931 opinion, quoted in your letter, was based upon a former opinion, reported in O. A. G. 1920, Vol. I, p. 140, where it was held, as appears from the syllabus:

"Monies credited to a bond and coupon account by a city depository are public funds and as such draw interest."

In the course of this opinion the then Attorney General said at p. 141:

"Section 4515 does not provide for the deposit and payment of interest on part, but 'all sums held in reserve,' and the whole theory underlying the sinking fund is that such fund is reserved for certain purposes. The language in the light of the legislative purpose negatives the idea of the depositary being exempt from its interest-paying obligations as to a part of such reserve. While section 4516 vests certain things in the discretion of the trustees, an examination of this section shows that they are so vested 'for carrying into effect the authority here given', which is to control and deposit all sums held in reserve. It may be pointed out that if some part of this reserve ought not, for good and sufficient reasons, to be deposited in the sinking fund depositary, it would be controlled by sections 4516-1 and 4295. The latter governs the custody and deposit of 'all the public money coming into the hands of the treasurer.'"

The contention which you state many depository banks are making, was raised in the request for that opinion, thus:

"It occurred to me that as this account was practically set aside for a certain purpose, namely, the payment of coupons, that it immediately becomes appropriated to that purpose and is no longer a part of the average daily balance, and that no interest should be required to be paid by the city upon them."

You will note from his conclusion that my predecessor did not deem this argument valid. The same contention was more recently raised in the case of *State, ex rel. Village of Warrensville Heights* vs. *Fulton,* 128 O. S. 192, which upheld the right of a depository bank to set-off a municipal deposit, composed in part of general and special assessment bond retirement funds, against a past due obligation of the municipality to the bank. The court answered the argument by citing authorities from other states to the effect that a bank holding public funds in a general account takes them without responsibility regarding their appropriation by the taxing authorities.

It is clear that when public funds are deposited pursuant to the various depository statutes of this state, the relationship of debtor and creditor is created between the bank and the public depositor, regardless of the character of any of the funds so deposited. When the statute requires the payment of interest by the bank, such interest is payable on all funds deposited under it, regardless of the fact that part or all of such funds may have been raised for a particular purpose, such as the payment of interest or principal on bonds. Nor is this conclusion altered by the fact that such funds are deposited in a separate account.

Your specific question is whether the present federal statutes prohibit a depository bank from paying interest upon a bond and coupon account. Section 11 (b) of the Banking Act of 1933, prohibiting a member bank of the Federal Reserve System from paying interest upon demand deposits, excepts public funds "with respect to which payment of interest is required under State law." In an opinion reported in O. A. G. 1933, Vol. II, p. 1238, I held as disclosed by the second and third branches of the syllabus:

"2. Where payment of interest is required under a depository contract entered into by a municipal corporation pursuant to an ordinance of council, in conformity with the municipal depository statutes (sections 4295, 4296), the payment of interest is required under State law within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.

3. The fact that section 4295 of the General Code does not prescribe a minimum rate of interest which a depository bank must pay upon municipal deposits, does not prevent that section from being a State law requiring the payment of interest within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933."

Under the 1920 and 1931 opinions, *supra,* it was held that Section 4515, General Code, also requires the payment of interest. It follows that deposits by sinking fund trustees under that section are likewise within the proviso of Section 11 (b), Banking Act of 1933.

Specifically answering your inquiry, it is my opinion that although a separate account for the payment of coupons and redemption of bonds is maintained in a municipal depository, all such deposits are made pursuant to either Sections 4295 or 4515, General Code, both of which are State laws requiring the payment of interest on public funds, and hence not within the inhibition of Section 11 (b), Banking Act of 1933, which forbids member banks of the Federal Reserve System from paying interest upon demand deposits.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3619.

APPROVAL, BONDS OF CITY OF LIMA, ALLEN COUNTY, OHIO—$4,200.00.

COLUMBUS, OHIO, December 12, 1934.

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

3620.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO—$68,000.00.

COLUMBUS, OHIO, December 12, 1934.

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