

year bidding period and prior to the next bidding period provided therefor by law.

2. During a period when the Treasurer of State is unable to deposit state funds in duly approved state depositories on account of such depositories having the maximum amount of such fund they are authorized to receive, or on account of such depositories being unwilling or unable to secure the deposit of such funds as required by law, the practice in good faith of holding such funds in the state treasury in the form of cashiers' checks and drafts does not constitute an illegal disposition of such funds so long as it is impossible to place such funds in state depositories in accordance with law.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3236.

APPROVAL, CONTRACT COVERING STATE HIGHWAY NO. 502, SECTION YOUNGSTOWN, (PART OF SOUTH AVENUE).

COLUMBUS, OHIO, September 21, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date submitting for my examination and approval contract covering the following:

City—Youngstown
State Highway No. 502
Section—Youngstown
(Part of South Avenue)

Finding said contract proper as to legality and form, I have endorsed my approval thereon and return the same herewith to you.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3237.

CEMETERY—TOWNSHIP TRUSTEES MAY USE GIFT OF MONEY FOR UPKEEP OR IMPROVEMENT OF CEMETERY WHEN.

SYLLABUS:

Where a gift of money is made to township trustees for a named township cemetery with no conditions attached thereto as to the particular uses for which the fund may be expended, such trustees may legally use the entire amount for the upkeep of the cemetery or for any improvement in connection with such cemetery, in their discretion.

COLUMBUS, OHIO, September 21, 1934.

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

DEAR SIR:—This will acknowledge your request for my opinion which reads:

“The Orange Township Trustees were recently given \$500.00 for the Nankin Cemetery with no strings attached to it, said sum being an outright gift.

They now desire to know whether this \$500.00 must be placed in the endowment fund for this cemetery and the income only used for the upkeep of the cemetery or whether they may use the full amount thereof for the upkeep of the cemetery or for any improvement they may desire to make. I would appreciate your opinion in this connection.”

I assume that Nankin cemetery is a township public cemetery under the jurisdiction of the township trustees.

Sections 3457 to 3460, inclusive, and sections 3281, 3244 and 18, General Code, bear on your matter, and read as follows:

“Sec. 3457. The township trustees may receive by gift, devise, bequest, or otherwise, any money, securities or other property in trust, as a permanent fund to be held and invested by them and their successors in office, the income therefrom to be used and expended under their direction, in the care, improvement and beautifying of any burial lot designated and named by the person making such gift, devise or bequest, in any township cemetery over which such trustees have jurisdiction.”

“Sec. 3458. Such trustees shall invest such fund, in their names as such trustees, in interest-bearing securities, with interest payable annually or semi-annually, and the principal as it becomes due, to the treasurer of such township, change the investment as the interest of the trust demands and collect the interest dividends, or other income, as they become due and payable. From such income the trustees shall first pay the cost and expense connected with the trust, and the balance shall be expended, under their direction, in the proper care and beautifying of such burial-lot, and draw warrants on the township treasurer to pay therefor, which shall be paid only from such income funds. Such gift, devise or bequest and income therefrom shall be exempt from taxation, the same as other cemetery property.”

“Sec. 3459. The township treasurer shall keep accurate and separate account of such investments, the income therefrom, and of all disbursements thereof, which shall be open to inspection at all reasonable times, and shall be approved by the trustees at each annual meeting. All moneys, securities and other property shall be and remain in the care and custody of the township treasurer and his successors in office, and he and his sureties shall be liable upon the official bond for the safe-keeping and proper accounting, as for other money coming into his hands as such treasurer, belonging to the township. For any purpose connected with such trust, the trustees and their successors may commence any action at law, or in equity, in any court, or make any defense therein necessary to the execution of the trust.”

"Sec. 3460. The trustees and treasurer and their successors shall receive the same compensation for services connected with such trust as they receive for similar services."

Sec. 3281. The trustees may accept on behalf of the township, the donation by bequest, devise or deed of gift, or otherwise, of any property, real or personal, for any township use. * * *

"Sec. 3244. Each civil township lawfully laid off and designated, is declared to be, and is hereby constituted, a body politic and corporate, for the purpose of enjoying and exercising the rights and privileges conferred upon it by law. It shall be capable of suing and being sued, pleading and being impleaded, and of receiving and holding real estate by devise or deed, or personal property for the benefit of the township for any useful purpose. The trustees of the township shall hold such property in trust for the township for the purpose specified in the devise, bequest, or deed of gift. * * *

"Sec. 18. The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

The first four quoted sections are almost identically sections 1 to 4 inclusive of an act passed by the Ohio legislature on April 13, 1894 (91 O. L. 149, 150), consisting of four sections. Upon the adoption of the present Ohio General Code in 1910, such sections of the act of 1894 were carried into the General Code almost verbatim as sections 3457 to 3460, General Code, inclusive. The title of such act as passed in 1894 was: "To *allow* township trustees to receive property by devise or bequest for the care of cemetery lots."

Upon examination of these first four quoted statutes in connection with the title of the act originally enacting these sections, it seems clear that these sections are designed only to give permissive authority for the township trustees to accept and use donated property in the manner specified where the terms of the gift designate a particular burial lot in a cemetery under the jurisdiction of the trustees.

Clearly these sections, then, can have no application in the present instance, as your communication states that the terms of the gift provide only that the money be used for Nankin cemetery.

Sections 18, 3244 and 3281, General Code, however, provide authority for the township trustees to accept this donated money and hold such money in trust for the use of the township and apply the same "according to the terms and conditions of the gift."

From these sections, it follows that the township trustees must apply these donated moneys "according to the terms of the gift."

As the terms of the gift stipulate only that the money be used for Nankin cemetery, it would appear that discretion has been given to the trustees to expend

the money as they see fit, so long as it is used at Nankin cemetery for lawful purposes for which money may be expended by township trustees in connection with a township cemetery.

I am therefore of the opinion, in specific answer to your question, that the township trustees may use the gift of money in question for the upkeep of the cemetery or any lawful improvement which they desire to make thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

3238.

SCRIP—ACCEPTABLE IN PAYMENT OF DEBT DUE BANK IN
LIQUIDATION WHEN—AUTHORITY OF SUPERINTENDENT OF
BANKS.

SYLLABUS:

1. Under sub-paragraph 1 of section 710-95, General Code, the Superintendent of Banks, in charge of the liquidation of a bank, may, with the approval of the Court of Common Pleas of the county in which the liquidation proceedings are pending, accept scrip issued by the county, in payment of interest and principal of debts due to such bank, where such scrip will be accepted by the county treasurer in payment of taxes, and where such bank owes taxes upon real estate located in that county which are due from the Superintendent of Banks.

2. Under sub-paragraph 2 of section 710-95, General Code, the Superintendent of Banks may, with the approval of the Court of Common Pleas, accept county scrip in exchange for assets of a bank in liquidation, provided that no assets shall be so exchanged at less than the appraised value thereof, as fixed by appraisers appointed as provided in Section 710-95b, General Code.

COLUMBUS, OHIO, September 22, 1934.

HON. I. J. FULTON, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—I have your request for my opinion which reads as follows:

“I am informed that certain debtors of Cleveland banks now in liquidation are offering scrip issued by Cuyahoga County in payment of interest and principal on loans. I am informed that such scrip will be accepted by the Treasurer of Cuyahoga County in payment of taxes.

Each of said banks has extensive real estate holdings in Cuyahoga County, and if permitted to accept such scrip could use the same in payment of the taxes thereon. I would appreciate your opinion as to whether or not under the circumstances, and for the purpose mentioned, I am permitted to accept scrip issued by Cuyahoga County in payment of interest and principal on loans.”

Section 710-95, General Code (Am. 115 O. L. 136), relative to the powers and duties of the Superintendent of Banks, reads in part as follows: