of the framers of the instrument, there is no occasion to resort to other means of interpretation." Lewis' Sutherland Statutory Construction, 2nd Edition, Section 366.

It was said in the opinion above referred to:

> "The Legislature must be presumed to have been mindful of the statutory authority for the office or position of deputy clerks of Boards of Deputy State Supervisors of Elections and the relationship of such persons to the conduct of elections. No reason for omitting specific reference to deputy clerks of Boards of Deputy State Supervisors of Elections suggests itself if it were intended that they should be rendered ineligible to hold any office for which they might be a candidate at an election in which such deputy clerks participate in an official capacity.
>
> In view of the plain and unambiguous language of the statute, I am of the opinion that deputy clerks of Boards of Deputy State Supervisors of Elections are not included within the provisions of Section 5092, G. C., supra."

Specifically answering your question, therefore, it is my opinion that under the provisions of Section 5092, General Code, a deputy clerk of the Board of Deputy State Supervisors and Inspectors of Elections is not prohibited from becoming a candidate while holding such position.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2068.

BANKS—INTEREST NOT PAYABLE ON DEPOSIT OF MUNICIPAL COURT FUNDS IN THE ABSENCE OF A CONTRACT PROVIDING FOR SUCH INTEREST—SECTION 1579-537, GENERAL CODE, CONSTRUED.

SYLLABUS:

Banks designated for the purpose by the judges of the Municipal Court of Akron, which receive deposits of funds made by the clerk of said Municipal Court in compliance with the provisions of Section 1579-537, *General Code, are not required to pay interest on such deposits in the absence of contract providing for the payment of such interest.*

COLUMBUS, OHIO, May 8, 1928.

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

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads as follows:

> "Section 1579-537, G. C., (Section 41 of the Akron Municipal Court Act) reads:
>
> 'All money deposited as security for costs and all other moneys other than costs paid into the court shall be noted on the record of the cause in which they are paid and shall be deposited by the clerk daily in such bank or banks in the city of Akron as shall be designated by the judges and shall

be paid out and distributed according to law as ordered by the judges. On the first Monday of each January the clerk shall make out a list of the titles of all causes in the court which were finally determined during the preceding year in which there remains unclaimed in the possession of the clerk any funds or any part of a deposit as security for costs not consumed by the costs in the case. The clerk shall give notice of the same to the parties entitled to such moneys or to their attorneys of record. All such money remaining unclaimed on the first day of April of each year shall be paid by the clerk into the city treasury, provided, however, that any part of such money shall be paid by the treasurer of the City of Akron or his successor to the person having the right thereto upon proper certificate of the clerk of the court.'

In the absence of an agreement, must banks accepting the above described funds from the Municipal Court clerk pay interest for the use thereof? The case of *Bank* vs. *Newark,* 96 O. S. 453, may be pertinent."

In the consideration of the question presented in your communication, I assume that the funds therein referred to have been deposited by the clerk of the Municipal Court of Akron in such bank or banks as have been designated for the purpose by the judges of said court, in conformity with the provisions of Section 1579-537, General Code, which you quote. Your communication also permits me to assume that the deposits made by the clerk of said court were made as general deposits in the name of the clerk, as such, and subject to payment by the bank on his check.

The general rule, in the absence of stipulation to the contrary, is that funds deposited in a bank become the property of the bank, and out of the transaction arises the relation of debtor and creditor between the bank and the depositor.

7 Corpus Juris, 628.
Covert vs. *Rhodes,* 48 O. S., 66, 71.
Bank vs. *Brewing Company,* 50 O. S. 151.
Cleveland Trust Company vs. *Scobie,* 114 O. S. 241, 247.

According to the decided weight of authorities, the rule is not different where deposits are lawfully made by a public officer of funds in his custody.

Glynn County vs. *Brunswick Terminal Co.,* 101 Ga. 244.
Otis vs. *Gross,* 96 Ill. 612.
Fletcher vs. *Sharpe,* 108 Ind. 276.
Retan vs. *Union Trust Co.,* 134 Mich. 1.
Brown vs. *Sheldon State Bank,* 139 Ia. 83.
Philips vs. *Gillis,* 98 Kans. 383.
McNulta vs. *West Chicago Park,* 40 C. C. A. 155; 99 Fed. 900.

In Tiffany on Banks and Banking, at page 44, it is said:

"Where a deposit is made by an executor, administrator, public officer, or other trustee, the relationship of debtor and creditor is created between the bank and the depositor as in other cases."

Where, however, public funds are deposited in a bank by an officer in violation of law or without legal authority, and the bank has knowledge of the public character of the funds, the relation of debtor and creditor does not arise with respect to the funds so deposited, but the bank holds the same as a quasi or constructive trustee.

Franklin Natl. Bank vs. *Newark,* 96 O. S. 453.

Page County vs. *Rose,* 130 Ia. 296.

Brown vs. *Sheldon State Bank,* 139 Ia. 83.

Meyers vs. *Board of Education,* 51 Kans. 87.

Board of Fire and Water Commissioners of the City of Marquette vs. *Wilkinson,* 119 Mich. 655.

State vs. *Midland State Bank,* 52 Nebr. 1.

Merchants National Bank vs. *School District No.* 8, 36 C. C. A. 432; 94 Fed. 705.

In the case of In re: Liquidation of Osborne Bank, 1 Ohio App. 140, where the court had under consideration the status of certain township and village funds deposited in said bank by the treasurers of the political subdivisions concerned, in the opinion it is said:

> "In 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. *The Cincinnati Board of Education,* 66 Ohio St. 71.
>
> The preservation of the public funds has, under the policy of our state, been the subject of special care, and to uphold a transfer of title and an investment of the public moneys a clear legislative expression and a compliance with the prescribed conditions in all of its material features is required.
>
> Where a bank receives from the treasurer public moneys known by it to be such it succeeds prima facie merely to the treasurer's possessory title and as quasi trustee for the safe-keeping of such funds, and the burden is upon the bank, if it claims greater title, to show statutory authority and warrant to support its right to convert the funds to its own use."

It appearing from your communication that the deposits here in question were made by the clerk of the Municipal Court of the city of Akron in banks designated by the judges of said court, under authority of Section 1579-537, General Code, it follows that said deposits were lawfully made by said clerk and that the only relation arising by reason of said deposits was the ordinary relation of debtor and creditor between the designated banks and the clerk of the Municipal Court as the depositor of said funds.

The question presented in your communication is whether such designated banks accepting funds deposited by the clerk of the Municipal Court, under authority of said section of the General Code, is required to pay interest for the use of such funds in the absence of an agreement upon their part to do so.

In 33 Corpus Juris, page 178, it is said:

> "Interest is the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention."

As a general rule, in the absence of statutory provision, a party is not chargeable with interest unless there is a promise thereof, express or implied, on his part, or some default in retaining the principal, after the same becomes due and payable.

In 33 Corpus Juris, at page 182, it is said:

"The law allows interest only on the ground of a contract express or implied for its payment, or as damages for the detention of money, or for the breach of some contract, or the violation of some duty, or where it is provided for by statute."

With respect to deposits in banks, the general rule of law is that interest is not payable upon such deposits in the absence of an agreement therefor until upon demand made by the depositor the bank refuses to pay the same.

State ex rel Corwin vs. *Urbana & Champaign Mutual Insurance Co.*, 14 Ohio 7, 13.
Hilburn vs. *Mercantile National Bank of Pueblo,* 39 Colo. 189.
Clarks, Admr., vs. *Farmers Natl. Bank of Richmond,* 124 Ky. 363.
Parsons vs. *Treadwell,* 50 N. H. 356.
Ex parte Stockman, 70 So. Car. 31.
Commercial Bank., etc., vs. *Citizens Trust, etc., Co.,* 153 Ky. 566.

In Morse on Banks and Banking, at Section 309, it is said:

"Ordinarily as to deposits in an incorporated bank, the rule is that a general deposit draws no interest unless by agreement until upon demand for payment it is refused or unreasonably delayed, or by virtue of statute, or on account of the default of the party liable to pay."

In 3 Ruling Case Law, at page 528, it is said:

"Since a bank is not in default until a demand or its equivalent has been made upon it for the deposit, a deposit in the absence of an agreement to the contrary does not bear interest until after the bank is in default."

In 7 Corpus Juris, at page 651, it is said:

"While a bank may, and in practice frequently does, contract to pay interest on deposits, in the absence of any special contract, a bank is not chargeable with interest on deposits subject to check until payment is demanded, but may become liable for interest upon refusal to pay on demand or by unreasonable or vexatious delay in payment."

Where the funds deposited in the bank are public moneys and the deposit of the same is in violation of law or without statutory authority and the bank has knowledge of the public character of such funds, the relation of debtor and creditor does not arise from the transaction, as has been above noted, but the bank as a trustee with respect to the funds deposited with it becomes liable for all profits accruing to such bank in the use of the funds so deposited and the public is entitled to such profits as interest on such funds and as an increment of the principal sum deposited.

Franklin Natl. Bank vs. *Newark,* 96 O. S. 453.
City of Newark vs. *Peoples Natl. Bank,* 15 Cir. Ct. (n. s.) 276, 90 O. S. 470.
State ex rel Campbell vs. *Natl. Bank,* 4 N. P. (n. s.) 245.

Pursuant to the principle of law just noted, this department, in an opinion under date of November 7, 1919, Opinions of the Attorney General for 1919, Vol. 2, p. 1402, held that where a non-depositary bank received county funds, having actual or imputed knowledge of their public character, and commingled and used such funds with its general deposits, such bank is required to account to the county for the profits derived by it from the use of such funds. A like ruling was made by this department in an opinion under date of August 1, 1918, Opinions of the Attorney General for 1918, Vol. 2, p. 1043, where it was held that banks other than depository banks, accepting deposits of school funds, were liable to the board of education for the profits arising from the use of such funds by the bank. However, in the case here presented, it appears that the funds in question were deposited strictly according to law, and, in the absence of an agreement upon the part of the designated banks receiving such deposits to pay interest thereon, I am of the opinion that they are not liable for the payment of such interest.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2069.

APPROVAL, BONDS OF THE VILLAGE OF BETHESDA, BELMONT COUNTY—$10,550.00.

COLUMBUS, OHIO, May 8, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2070.

APPROVAL, BONDS OF THE CITY OF STRUTHERS, MAHONING COUNTY—$14,753.64.

COLUMBUS, OHIO, May 8, 1928.

Industrial Commission of Ohio, Columbus, Ohio.