ination and approval a reservoir land lease in triplicate executed by the Conservation Commissioner to The Home Banking Company of St. Marys, Ohio. By this lease, there is granted and demised to the lessee above named for the term of fifteen years the right to occupy and use for cottage site and docklanding purposes a small island in the Northeast Quarter of the Southwest Quarter of Section 18, Town 6 South, Range 4 East, Auglaize County, Ohio, commonly known as "Smith's Island."

Upon examination of the lease here in question, I find that the same has been properly executed by the Conservation Commissioner and by The Home Banking Company by the hand of its president duly authorized by the board of directors of said company.

Upon examination of the provisions of this lease and of the conditions and restrictions therein contained, I find the same to be in conformity to the provisions of section 471, General Code and of other statutory enactments relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2542.

NATIONAL BANK—DESIGNATED AS DEPOSITORY FOR FUNDS OF MUNICIPAL COURT OF CLEVELAND UNAUTHORIZED TO PLEDGE ASSETS AS SECURITY THEREFOR—SUCH DEPOSITS NOT "PUBLIC FUNDS" UNDER BANKING ACT OF 1933.

SYLLABUS:

1. *A national bank, designated as a depository for funds of the Municipal Court of Cleveland, under section* 1579-42, *General Code, has no power to pledge its assets as security for funds deposited thereunder.*

2. *Deposits under said sections of moneys paid into the Municipal Court of Cleveland by private parties, pending the outcome of litigation, are not deposits of "public funds" within the meaning of the proviso contained in section* 11 (b) *of the Banking Act of* 1933, *and, therefore, a member bank of the Federal Reserve System is without power to pay interest upon such deposits withdrawable upon demand.*

COLUMBUS, OHIO, April 21, 1934.

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

GENTLEMEN:—I have your inquiry concerning the power of a national bank, designated under Section 1579-42, General Code, as the depository for funds of the Municipal Court of Cleveland, consisting of moneys held on behalf of private litigants, to pledge its assets as security for such deposits. You further inquire whether a depository bank may pay interest upon such funds deposited by the Municipal Court of Cleveland.

Prior to the Act of June 25, 1930, c. 604, 46 Stat. 809, amending Section 45 of the National Bank Act of 1864 (R. S. 5336; 12 U. S. C., Sec. 24, Seventh), a national bank could not legally pledge assets to secure funds of a state or a political subdivision thereof. *City of Marion, Illinois,* vs. *Sneeden, Receiver,* 54 S. Ct. 421, 78 L. Ed. 521; *The Texas & Pacific Ry. Co.* vs. *Pottoroff,* 54 S. Ct. 416, 78 L. Ed. 514. The amendment in question permits a national bank to give security "of the same kind as is authorized by the law of the state in which such association is located in the case of other banking institutions in the state." Whether or not a national bank located in Ohio can pledge its assets to secure the funds in question thus rests upon the power of banks organized under the laws of this state to make such pledge. Upon examination I find no statute of Ohio expressly authorizing banks to pledge assets as security for public deposits. However, it has been held that such power may be implied from a legislative enactment requiring public officers to receive a pledge of securities. *First American Bank & Trust Co.* vs. *Palm Beach,* 96 Fla. 247, 117 So. 900, 65 A. L. R. 1398.

Section 330-3, General Code, authorizes the state to accept collateral as therein enumerated to secure the deposit of state funds. Sections 2732 and 4295, respectively, are similar provisions in regard to county and municipal funds. Sections 7605 and 7607 contain similar authorization in respect to school funds. As to funds covered by these sections and by similar provisions, it is clear that a state bank, *a fortiori* a national bank, has power to pledge assets of the classes therein enumerated as security. After diligent search, I fail to find statutory authority for the pledging of a bank's assets to secure the deposit of funds paid into the Municipal Court of Cleveland. Section 1579-42, General Code (115 O. L. 219), provides for the deposit of such funds. Such section reads:

> "All money deposited as security for costs and all other moneys, other than costs, paid into the municipal court, shall be noted on the record of the cause in which they are paid and shall be deposited by the clerk in such banking institutions where the best rate of interest may be obtained as shall be designated by the judges of the court, there to abide the orders of the court. On the first Monday in January of each year the clerk shall make a list of the titles of all causes in the municipal court which were finally determined more than one year past, in which there remains unclaimed in the possession of the clerk of any such fund, or any part of a deposit for security for costs not consumed by the costs in the case. The clerk shall give notice of the same to the parties entitled to said moneys, or to their attorneys of record. All such moneys remaining unclaimed on the first day of April of each year shall be paid by the clerks to the city treasurer, provided, however, that any part of such moneys shall be paid to the person having the right thereto upon proper certificate of the clerk of the court."

This section does not purport to authorize the clerk to accept a pledge as security. The Illinois depository statute under consideration in the case of *City of Marion, Illinois,* vs. *Sneeden,* supra, did not authorize the pledging of assets by a depository bank, but provided only for the giving of a surety bond.

The Supreme Court of the United States held the pledge to be *ultra vires* and permitted the receiver of the depository bank to recover it.

It is clear that there is no statutory authority for the pledge in question. I find no decisions of the Supreme Court of Ohio declaring the public policy of this statute to authorize such pledge. In the *City of Marion case,* Mr. Justice Brandeis said:

> "An authoritative determination of the question whether Illinois banks have power to pledge assets to secure the deposits of public moneys of a political subdivision of the State can be given *only by its highest court.*" (Italics the writer's.)

It is thus clear that in the absence of statute the Supreme Court of the United States would not recognize a decision of a court of this state other than the Supreme Court as declaratory of the laws of Ohio upon the question presented. It follows that a national bank designated as a depository for funds of the Municipal Court of Cleveland under section 1579-42, General Code, is without power to pledge its assets to secure funds deposited thereunder.

Your second question is whether a depository bank may pay interest upon deposits by the clerk of the Municipal Court of Cleveland under section 1579-42, General Code. This section provides that the funds shall be deposited in banks "where the best rate of interest may be obtained." I am informed that the bank referred to in the letter of the examiner, attached to your request, is a member bank of the Federal Reserve System.

Section 11 of the Banking Act of 1933 amends Section 19 of the Federal Reserve Act (U. S. C. Title 12, secs. 142, 374, 461-466; Supp. VI, Title 12, sec. 462a). Paragraph (b) of Section 11 prohibits a member bank of the Federal Reserve System from paying interest upon demand deposits, but contains a provision excepting "any deposit of public funds made by or on behalf of any State, county, school district, or other subdivision or municipality, with respect to which payment of interest is required under State law."

In Opinion No. 1208, rendered July 28, 1933, I held, as disclosed by the syllabus:

> "The Banking Act of 1933 (Glass-Steagall Act) does not prohibit a member bank of the Federal Reserve System from paying interest upon demand deposits of counties, townships or school districts where the Depository contracts were entered into under the respective depository statutes of Ohio which require the payment of interest upon such deposits."

In Opinion No. 1384, rendered August 11, 1933, it was held as appears from 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 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."

In neither of these opinions was the question of what constitutes public funds, within the meaning of the section, raised or considered. It is stated in your examiner's letter that the funds concerning which you inquire are held by the court for litigants pending final disposition of the litigation. I call your attention to Federal Reserve Board Regulation Q. Series of 1933, Section II, subsection (b), paragraph 3, footnote (2):

"Deposits of moneys paid into State courts by private parties pending the outcome of litigation are not deposits of 'public funds' made by or on behalf of any state, county, school district, or other subdivision or municipality, within the meaning of the above proviso." 1 Prentice-Hall Federal Bank Service, Sec. 2294.

In the case of *Coudert, Administrator,* vs. *United States,* 175 U. S., 178, it was held, as appears from the syllabus:

"Money derived from the sale of a vessel captured in 1863 as a blockade runner, which, pending proceedings in court for condemnation and forfeiture, was deposited by the marshal to await the further order of the court in a national bank which was a special or designated depositary of public moneys, and which deposit was in part lost by reason of the failure of the bank, is not public money of the United States which may be recovered from it under the act of March 3, 1887, c. 359, 24 Stat. 505, generally known as the Tucker Act."

In accord, *Branch* vs. *United States,* 100 U. S., 63.

The following language appears in 50 C. J., Sec. 40, p. 854:

"The term 'public funds' means funds belonging to the state or to any county or political subdivision of the state; more especially taxes, customs, moneys, etc., raised by the operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose; and in this sense it applies to the funds of every political division of the state wherein taxes are levied for public purposes. The term does not apply to special funds, which are collected or voluntarily contributed, for the sole benefit of the contributors, and of which the state is merely the custodian."

I desire to call your attention to the fact that the definition of "public money" contained in section 286, General Code, has no application in interpreting the language of the federal statute in question.

In the light of the foregoing, it is my opinion that:

1. A national bank, designated as a depository for funds of the Municipal Court of Cleveland, under section 1579-42, General Code, has no power to pledge its assets as security for funds deposited thereunder.

2. Deposits under said section of moneys paid into the Municipal Court of Cleveland by private parties, pending the outcome of litigation, are not deposits of "public funds" within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933, and, therefore, a member bank of the Federal Reserve System is without power to pay interest upon such deposits withdrawable upon demand.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2543.

COUNTY HOME—MANDATORY DUTY OF COUNTY COMMISSIONERS TO REMOVE SUPERINTENDENT WHO HAS REQUIRED INMATES OR EMPLOYES TO RENDER SERVICES FOR PRIVATE INTERESTS.

SYLLABUS:

It is the mandatory duty of the county commissioners to remove the superintendent of a county home where the board of county commissioners has determined that the superintendent has, in violation of section 2522, General Code, required or permitted inmates or employes of the county home to render services for the private interests of the superintendent, matron or member of the board of county commissioners, or any private interest.

COLUMBUS, OHIO, April 21, 1934.

HON. HAROLD U. DANIELS, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

> "The undersigned should like the opinion of the Attorney General as to the force of the word 'shall' used in a portion of General Code Section 2522, we quote that portion of the section:
>
> 'The superintendent and matron shall be removed if they or either of them, require or permit inmates or employes to render services for the private interests of the superintendent, matron or member of the board of County Commissioners, or any private interests.'
>
> The reason for asking his opinion of the force of the word 'shall', is as follows:
>
> On March 5th, 1934, the Bureau of Inspection and Supervision of Public Offices, reported a special examination of The Lake County Home. There were two findings in this report against the Superintendent, which would come under General Code Section 2522. The first finding was based upon an agreement to exchange work between the Superintendent and a Mr. S. The Superintendent allowed an inmate to plow 5 acres of land for Mr. S. at an agreed price of $25.00; thereafter Mr. S.