

OPINION NO. 89-051

Syllabus:

A county recorder may maintain a checking account with a financial institution, for purposes of depositing checks and issuing refund checks, subject to the restrictions of R.C. 131.11.

To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 25, 1989

I have before me your request for my opinion as to whether the county recorder may maintain a checking account. Information is provided to the effect

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that individuals often send or present checks to the county recorder's office for recording fees in an amount in excess of the fees imposed by the county recorder's office. The county recorder would like to issue the refunds on such overpayments by check rather than in cash. Specifically, you ask whether the county recorder may maintain a checking account for purposes of depositing checks and issuing refund checks.

The county recorder has only those powers and duties which are set forth by statute or are reasonably implied to effectuate those powers statutorily granted. *State ex rel. Preston v. Shaver*, 172 Ohio St. 111, 114, 173 N.E.2d 758, 760 (1961) ("[a] county recorder is an elected public official charged with the performance of duties as prescribed by statute"); accord 1988 Op. Att'y Gen. No. 88-077; 1936 Op. Att'y Gen. No. 5383, vol. I, p. 451; see also *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed"), *aff'd sub nom. State of Ohio on Relation of Davis v. Hildebrant*, 241 U.S. 565 (1916). Thus, a county recorder can only maintain a checking account if granted the authority, either expressly or impliedly, by statute.

The powers and duties of a county recorder are set forth in R.C. Chapter 317 and related provisions. A county recorder is required to make a public record of various types of documents and to retain custody over such public record. See, e.g., R.C. 317.08 (deeds, mortgages, powers of attorney, plats, leases, and corrupt activity lien notices filed pursuant to R.C. 2923.36); R.C. 317.09 (federal tax liens); R.C. 317.10 (certified copy of matter in bankruptcy); R.C. 2937.27 (notices of lien and discharge filed pursuant to R.C. 2937.26); R.C. 5301.23 (all properly executed mortgages); R.C. 5301.25 (deeds, land contracts, and instruments of conveyance or encumbrance of lands, tenements, or hereditaments). Pursuant to R.C. 317.32, the county recorder shall charge and collect fees for certain services furnished by his office with respect to such documents. See Op. No. 88-077 at 2-378 ("[t]he duty of the county recorder to collect the fees imposed by R.C. 317.32 is mandatory"); see also R.C. 325.28 ("[e]ach...county recorder shall charge and collect the fees, costs, percentages, allowances, and compensation allowed by law"). A county recorder, thus, is statutorily required to charge and collect fees for services provided by his office.

Additionally, R.C. 325.27 and R.C. 325.31 establish a statutory scheme whereby all moneys collected and received by the county recorder for services rendered are for the sole use of the county treasury and are to be held, accounted for, and paid into the county treasury on the first business day of each month. R.C. 325.27 provides that:

All the fees, costs, percentages, penalties, allowances, and other perquisites collected or received by law as compensation for services by a...county recorder, shall be received and collected for the sole use of the treasury of the county in which such officers are elected, and shall be held, accounted for, and paid over as public moneys belonging to such county in the manner provided by sections 325.30¹ and 325.31 of the Revised Code. (Footnote added.)

R.C. 325.31 provides in part:

On the first business day of each month, and at the end of his term of office, each officer named in section 325.27 of the Revised Code, shall pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances, and perquisites collected by his office during the preceding month or part thereof for official services.

¹ R.C. 325.30 requires full and regular accounts to be kept by each officer named in R.C. 325.27.

While these statutes mandate that the county recorder collect and pay into the county treasury all the moneys in his custody for services rendered, such statutes do not provide any express provisions as to what the county recorder is to do with such moneys prior to paying them into the county treasury.

The Ohio Supreme Court has recognized that where public moneys come into the custody of a public official and there is no specific statute as to what is to be done with them, the official may deposit such moneys in accordance with prevailing custom in the business community. *Busher v. Fulton*, 128 Ohio St. 485, 191 N.E. 752 (1934); see also 1984 Op. Att'y Gen. No. 84-075; 1982 Op. Att'y Gen. No. 82-054. That a county recorder may, at least in certain instances, deposit moneys which are held or controlled by him in a bank or financial institution is also reflected in R.C. 131.11, which provides in part:

No money held or controlled by any...county recorder...*shall be deposited in any bank*, trust company, or building and loan association as defined in section 1151.01 of the Revised Code until there is a hypothecation of securities as provided for in section 135.18 of the Revised Code, or until there is executed by the bank, trust company, or building and loan association selected, a good and sufficient undertaking, payable to the depositor, in such sum as the depositor directs, but not less than the excess of the sum that is deposited in the depository, at any one time over and above the portion or amount of the sum as is at any time insured by the federal deposit insurance corporation created pursuant to "The Banking Act of 1933," or by the federal savings and loan insurance corporation created pursuant to the "Home Owners' Loan Act of 1933," 40 Stat. 128, 12 U.S.C. 1461, or by any other agency or instrumentality of the federal government, pursuant to such acts or any acts of congress amendatory thereof. (Emphasis added.)

Although R.C. 131.11 does not specifically grant county recorders the authority to deposit moneys collected in a checking account, the inference is that county recorders may deposit such moneys collected in a checking account with a financial institution, if the conditions of R.C. 131.11 are met. See, e.g., Op. No. 84-075 (a sheriff or prosecuting attorney may deposit moneys in a financial institution, pursuant to R.C. 131.11, if he determines that such practice effectively promotes the discharge of his duty to safeguard moneys which have been acquired in connection with law enforcement and may be needed as evidence in a criminal trial); 1965 Op. Att'y Gen. No. 65-190 (overruled on other grounds by Op. No. 82-054) (R.C. 131.11 implies that the clerk of a municipal court may deposit moneys received under R.C. 1901.31(F)); 1961 Op. Att'y Gen. No. 2720, p. 748 (overruled on other grounds by Op. No. 82-054) (R.C. 131.11 implies that a clerk of a court of common pleas may deposit moneys which he holds by virtue of his office and which do not belong to the county).

Therefore, it is my opinion, and you are hereby advised, that a county recorder may maintain a checking account with a financial institution, for purposes of depositing checks and issuing refund checks, subject to the restrictions of R.C. 131.11.