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SECURITIES DEPOSITED WITH COUNTY TREASURER—  
PAYMENT OF INHERITANCE TAXES—SECURITIES MUST  
BE KEPT IN CUSTODY OF TREASURER—CANNOT BE DE-  
POSITED WITH BANK, TRUST COMPANY OR OTHER FINAN-  
CIAL INSTITUTION AS TRUSTEE—SECTION 5343-2 G. C.

SYLLABUS:

Securities which are deposited with a county treasurer, pursuant to the provisions of Section 5343-2, General Code, securing the payment of inheritance taxes, must be kept in the custody of the treasurer and cannot be deposited with a bank, trust company or other financial institution as trustee.

Columbus, Ohio, August 14, 1943.

Hon. Ralph J. Bartlett, Prosecuting Attorney,  
Columbus, Ohio.

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, reading as follows:

"This office has been requested by Henry Frank, Treasurer of Franklin County, Ohio, to submit the following to you for your opinion:

Section 5343 of the General Code of Ohio provides that the tax on inheritances which are dependent upon contingencies or conditions which may defeat the succession shall be calculated at the highest possible rate, and shall be paid by temporary order.

Section 5343-2 of the General Code of Ohio provides that under the conditions above mentioned the inheritance taxes may be computed at the lowest and the highest possible rates dependent upon the contingencies, and that the amount of the taxes figured at the lowest rate shall be paid in cash. The amount of the difference between the lowest rate so paid and the highest possible rate may be secured by the deposit of specified classes of bonds with the county treasurer to whom the tax is payable to be held by him until the happening of the contingencies by reason of which the tax was assessed under Section 5343, at which time the Court redetermines the tax and payment of the actual amount found to be due is paid. During the period the bonds are so held by the Treasurer as security for the payment of inheritance taxes the income derived therefrom is payable to the Executor or Trustee during the continuance of the Trust Estate.

Bonds so deposited remain with the Treasurer during the continuance of the trust estate which in numerous instances is a period of many years, and in the aggregate amount to large sums. The continuous custody of such bonds by the treasurer entails risks of loss by natural hazards and burglary which in the public interest should be avoided in so far as possible.

Section 2296-15, General Code, makes it mandatory upon the Treasurer to deposit in public depositories all public money in his possession in excess of such amounts necessary as a cash reserve, which reserve shall be kept in the office vaults.

Section 2296-15a, General Code, provides that the securities pledged by a public depository to secure the repayment of the deposit of public money may be deposited with a financial insti-

tution as trustee, which trustee institution issues its receipt therefor to the county treasurer, who holds the trustee's receipt in lieu of the actual securities.

Will you please advise me whether or not bonds required to be deposited with a county treasurer pursuant to Section 5343-2 may be deposited with a Federal reserve bank, branch thereof or institution mentioned in Section 2296-4 as trustee, the county treasurer to hold the trustee's receipt therefor, in lieu of the actual bonds.

Also, is there any distinction between the following classes of depositors of bonds for security of payment of inheritance taxes under Section 5343-2:

1. A depositor qualified both as a public depository and to execute trusts in Ohio; and
2. An individual or institution qualified to execute trusts in Ohio but not qualified as a public depository."

In considering the provisions of Section 5343-2 of the General Code, to which you refer, I need not quote the entire section. You have accurately stated its substance. I do, however, think it worth while to call attention to the precise language of that portion of the section which relates to the duties of the treasurer with whom bonds have been deposited. It provides:

*"\* \* \* They shall be held by said treasurer to the credit of the estate until the actual happening of the contingencies or conditions by reason of which the estate was rendered assessable under section 5343, but the income therefrom when received by such treasurer shall be paid over to the executor or trustee during the continuance of the trust estate. From time to time, the treasurer shall, with the approval of the tax commission permit withdrawals of such securities or part thereof upon deposit with him and approval of the tax commission of other securities of the kind heretofore named, so as to maintain the value of such deposits as herein provided until the final determination and payment of the tax. \* \* \**" (Emphasis mine.)

The depository act, to which you refer, contained in Sections 2296-1 to 2296-25, General Code, became effective April 16, 1937. Prior to its enactment a question very similar to the one which you now raise was presented to one of my predecessors who, in an opinion found in Opinions of Attorney General for 1928, p. 41, held:

"The cash and bonds deposited with the county treasurer, under the provisions of Section 5343-2, General Code, shall be

held by said county treasurer to the credit of the estate until the actual happening of the contingencies or conditions by reason of which the estate was rendered assessable under Section 5343, General Code; and may not be deposited with a trust company as trustee."

In that opinion emphasis was laid upon the provisions of the statute defining the duties and responsibilities of the county treasurer as to the custody of public money and property which came into his possession, particularly Section 2638, General Code, which provides:

"The county treasurer shall keep his office at the seat of justice of the county in a room or rooms provided for that purpose by the county commissioners, which shall constitute the county treasury. *Except as otherwise specifically provided by law, all public monies and property in his possession shall be at all times kept in the county treasury.*" (Emphasis mine.)

Also Section 2419, General Code, which makes it the duty of the commissioners to provide offices and equipment for the various county offices, reads in part:

"They shall provide all room, fire and burglar-proof vaults and safes and other means of security in the office of the county treasurer, necessary for the protection of public moneys and property therein."

From these provisions of the law it appears quite clear that it was intended by the Legislature that the public moneys and other property committed to the custody of the county treasurer should be kept by him at all times in the county treasury except as otherwise specifically provided by law.

There was at the time that opinion was written no statute authorizing the county treasurer to deposit with a trust company or other depository the securities that might come into his hands pursuant to the provisions of Section 5343-2, and there has been no legislative enactment since giving him such authority unless we can find it in the uniform depository law, to which you call attention.

Coming then to examine the provisions of the "uniform depository law", and particularly Section 2296-15a, General Code, I find that that section contemplates the deposit by the treasurer with a trust company or other institution as trustee, of certain bonds or securities which have been placed in the hands of the treasurer. It is clearly an exception to the provision of Section 2638, General Code, which I have quoted. But

the securities with which Section 2296-15a, General Code, deals are only those which are required by law to be deposited with the treasurer to secure the deposits of public money that have been awarded a bank or other financial institution as a public depository. This section provides in part as follows:

"The treasurer, before making any deposit in a public depository pursuant to an award made under this act, shall require the institution designated as a public depository to pledge to and deposit with him, as security for the repayment of all public moneys to be deposited in the public depository during the period of designation pursuant to the award, eligible securities of aggregate market value equal to the excess of the amount of public moneys to be at the time so deposited, over and above such portion or amount thereof as shall at such time be insured by the federal deposit insurance corporation or by any other agency or instrumentality of the federal government."

After describing the character of bonds which may be thus deposited with the treasurer to secure the deposits, Section 2296-15a proceeds as follows:

"An institution designated as a public depository may, by written notice to the proper governing board and to the treasurer, designate a qualified trustee and deposit the eligible securities required by this section with the designated trustee for safe-keeping for the account of the treasurer and the institution as a public depository, as their respective rights to and interests in such securities under this section may from time to time appear and be asserted by written notice to or demand upon the trustee. In such case, the treasurer shall accept the written receipt of the designated trustee, describing such securities, as and for a pledge of such described securities, and issue to the public depository his written acknowledgment to that effect, keeping a copy thereof in his office. Thereupon, the securities described in such trustee's receipt shall be deemed to *have been pledged with the treasurer and to have been deposited with him*, for all the purposes of this section." (Emphasis mine.)

This provision for a deposit by the treasurer with an institution which shall act as custodian of the securities relates only to the securities required of a financial institution to which an award has been made of public money as a public depository and its provisions cannot by any process of reasoning be enlarged to include other securities which may come into the hands of the treasurer pursuant to some other law or for a purpose wholly foreign to the uniform depository law. There is therefore nothing in the depository act so-called which throws any direct light on the question which you have submitted or affords any authority whereby the treasurer may relieve himself of the custody of or responsibility

for the securities deposited with him under the provisions of Section 5343-2. The holding, therefore, of my predecessor, to which I have referred and in which I concur, is as applicable to the question you raise as it was to the situation then presented.

Therefore, in specific answer to your principal inquiry, I am of the opinion that securities which are deposited with a county treasurer, pursuant to the provisions of Section 5343-2, General Code, securing the payment of inheritance taxes, must be kept in the custody of the treasurer and cannot be deposited with a bank, trust company or other financial institution as trustee.

As the questions contained in the final paragraph of your communication appear to presuppose an affirmative answer to the question above discussed, and since my answer to that question is in the negative, it does not seem necessary to go into definitions of the various classes of institutions which you mention.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.