

1045.

DEPOSITORY—COUNTY TREASURER MAY ISSUE ORDER TRANSFERRING FUNDS DEPOSITED BY HIM IN BANK ON RESTRICTED BASIS TO SUBDIVISION TO WHICH FUNDS BELONG WHEN.

SYLLABUS:

When a bank, which is a county depository and is also the depository of the subdivision, is, by order of the superintendent of banks pursuant to the provisions of Section 710-107a, General Code, restricted as to payments to depositors, and prior to the time of such order, there have been deposited by the county treasurer, funds collected by him, being the proceeds of taxes levied by and for the benefit of taxing subdivisions upon the request of and upon receipt of a proper voucher of the county auditor the county treasurer may, pursuant to the authority of Section 2675, General Code, issue such check or other order to such taxing subdivision as will cause the portion of the funds so deposited in such depository, but belonging to the subdivision, to be transferred to it, even though by virtue of the order of the superintendent of banks, such funds are not immediately withdrawable.

COLUMBUS, OHIO, July 18, 1933.

HON. JOHN M. HARDING, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—Your recent request for opinion reads:

“This office is in receipt of a communication from the Board of Commissioners and the Treasurer of Lorain County, of which the following is a copy:

‘The undersigned Board of County Commissioners and the Treasurer of Lorain County desire to request your opinion on the following state of facts:

The County Treasurer of Lorain County has on deposit public funds in certain banks in Lorain County which are unlicensed to do business, and which funds were placed there prior to February 27, 1933. These funds naturally are restricted, and cannot be distributed to the political subdivisions entitled to the same.

Some of the political subdivisions use the same depository as does the County Treasurer, and some of the subdivisions have issued an order to the County Treasurer authorizing the Treasurer to draw the necessary voucher, check, warrant or assignment on the restricted county account and deposit the same in the same bank on which it is drawn to the restricted account of the subdivision, and we should like to inquire whether in your opinion such transfer is legal.

The form of the order used is as follows:

....., Ohio,
June, 1933

Mr. N. D. Backus,
Treasurer of Lorain County, Ohio,
Elyria, Ohio.

Dear Sir:

The undersigned political subdivision of Lorain County, State of Ohio, does, subject to the approval of I. J. Fulton, Superintendent of

Banks and Banking of the State of Ohio, hereby authorize, empower and direct you to draw the necessary voucher, check or warrant on Bank for Dollars (\$.....) on your restricted county account, and deposit the same in said bank to the restricted account of the undersigned.

Yours truly, .

.....
Township Trustees,

By:

Clerk.'

Can such a transfer legally be made?

Your early reply will be greatly appreciated.

Feeling that this is a matter of grave import, I submit the same to your office for an opinion."

The question of law raised by your inquiry arises from the nature of the deposit of moneys by the county treasurer in the county depository. The county treasurer is a collector of tax funds, some of which are levied by the county and some by the various other taxing subdivisions. The county treasurer, in the collection of taxes, is not, strictly speaking, a county officer. (*State ex rel. Gilbert, Aud. vs. Yates*, 66 O. S. 546; *State vs. Lewis*, 69 O. S. 202, 2 O. A. G. 1931, p. 1245). To the extent only, that he collects taxes for, and has the custody of funds of the county, he is the agent of the county. (2 O. A. G., 1931, p. 1245.) The county, as distinguished from the county treasurer, occupies no trust relation toward the taxing subdivisions by reason of the fact that the county treasurer has received funds from taxes assessed by such subdivisions. *Vigo Township vs. Board of Commissioners of Knox County*, 111 Ind. 170; 2 O. A. G., 1930, p. 1245, 1248. While the board of county commissioners may have the authority to settle a claim in favor of the county, such board has no authority to settle that part of a claim against a depository which represents funds collected by the county treasurer for the benefit of any taxing subdivision other than the county. 2 O. A. G., 1931, p. 1245; O. A. G., 1933 No.; *Commissioners vs. Springfield*, 36 O. S. 643. In other words, it appears that in Ohio the county treasurer is to be considered as the agent of each particular taxing subdivision for which he collects taxes, to the extent of the collecting for, and paying over to such various subdivisions the proceeds of tax levies made by them.

The county treasurer then, having commingled and deposited, in accordance with law, funds belonging to various subdivisions in a common depository which has ceased to pay the moneys deposited with it on demand, you inquire whether that portion of such account so "frozen", which belongs to a particular subdivision, may be assigned to that subdivision to which it may belong? In other words, when the deposit with the depository ceases to be a deposit and ceases to be withdrawable in money, may the distribution be made to the various subdivisions in kind?

It should be borne in mind that the bank or depository, in question, is not in the process of liquidation; it is merely in the hands of a conservator for a more or less limited period of time during which it may be determined whether it may be necessary to liquidate the bank. The conservator has all the powers that the bank had but subject to the order of the superintendent of banks issued pursuant to the authority of Section 710-107a, General Code, with reference to the payment of money. I find no restrictions on the right of transfer of claims

against a bank in the hands of a conservator in House Bill 661, enacted by the 90th General Assembly. In fact, specific authority is granted to the superintendent of banks to order the closing of the books of the bank against further transfers of shares but with the additional authority to permit them to be reopened at any time. It might be plausibly argued that the legislature did not intend to restrict any transfers of interest in the bank's assets even as to shares of stock and that, only when expressly ordered by the superintendent of banks.

There being no apparent statutory restrictions preventing the bank from making the transfer, the provisions of statute with reference to the power of the county treasurer might well be examined. Section 2674, General Code, provides that money other than state moneys, shall be paid from the county treasury only on the warrant of the county auditor. Section 2675, General Code, reads as follows:

"When a warrant drawn on him as treasurer by the auditor of the county is presented for payment, if there is money in the treasury or depository to the credit of the fund on which it is drawn, and the warrant is endorsed by the payee thereof, the county treasurer shall redeem it by payment of cash or by check on the depository, and shall stamp on the face of such warrant, 'Redeemed,' and the date of redemption."

While it is evident that there must be a warrant of the county auditor before there can be any payment by the county treasurer to the subdivision, it is not so evident that the provisions of these sections would prevent the proposed method of transfer of funds. Such sections purport to be a grant of power to the county treasurer to transfer title to the funds to the subdivision rather than a limitation on the power.

It is common knowledge that a check is often nothing more or less than a convenient method for the transfer of funds from the account of one depositor in a bank to another; or it may be from a depositor in one bank to a depositor in another, no funds actually passing from one bank to the other. A check is a bill of exchange drawn on a bank authorizing it to pay a certain sum in money to the payee or holder thereof upon presentment. If the township, by agreement with the county treasurer, is willing to accept as cash, deposits in a frozen account in a county depository, which is also the depository of the township, I am unable to find any provision of law which would prevent the county treasurer from drawing a check or order upon a "frozen" account, providing the county auditor has drawn his warrant authorizing such payments, nor does it appear to me that such action on the part of the taxing subdivisions would be prohibited, since the only effect of the transaction in question would be merely to transfer the legal title to a portion of the funds which are in a county depository, to the taxing subdivision which already has the equitable ownership or title to the portion transferred.

Specifically answering your inquiry it is my opinion that when a bank which is a county depository and is also the depository of a subdivision, is, by order of the superintendent of banks, pursuant to the provisions of Section 710-107a, General Code, restricted as to payments to depositors, and prior to the time of such order, there have been deposited by the county treasurer funds collected by him, being the proceeds of taxes levied by and for the benefit of taxing subdivisions upon the request of and upon receipt of a proper voucher of the county auditor the county treasurer may, pursuant to the authority of Section

2675, General Code, issue such check or other order to such taxing subdivision as will cause the portion of the funds so deposited in such depository, but belonging to the subdivision, to be transferred to it, even though by virtue of the order of the superintendent of banks, such funds are not immediately withdrawable.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1046.

APPROVAL, PROPOSED ARTICLES OF INCORPORATION OF THE
 LIBERTY MUTUAL INDEMNITY COMPANY.

COLUMBUS, OHIO, July 18, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the proposed articles of incorporation of The Liberty Mutual Indemnity Company and find that they are not inconsistent with the constitution and laws of this state or of the United States. I am therefore returning the same to you with my approval endorsed thereon.

I noticed, however, that the date of the signing of the articles has been omitted and suggest that you have this filled in before same are filed.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1047.

JUVENILE COURT—JURISDICTION TO COMMIT CRIPPLED CHILD TO
 DIVISION OF CHARITIES LIMITED TO CHILDREN UNDER AGE
 OF 18 YEARS.

SYLLABUS:

The jurisdiction of a juvenile court to commit a crippled child to the Division of Charities is limited by the provisions of Section 1642 of the General Code, and is limited to children under the age of eighteen (18) years.

COLUMBUS, OHIO, July 19, 1933.

HON. JOHN McSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent inquiry which reads:

“The question has been raised by the Court of Domestic Relations of Hamilton County as to whether the Juvenile Court, under Sections 1352-4, 1352-8 and 1352-9, all of which pertain to care and