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.

performed labor for the Home amounting to $10 00 and paid the Superintendent $15.00 in cash. This payment to the Superintendent was never accounted for by the Superintendent.

The second charge was that a J. M. had some work done on his place by an inmate of the County Home and an employee of the County Home, for which Mr. M. paid the Superintendent either $3.50 or $4.00.

We quote the finding made by the State Examiner upon these two charges:

'FINDING:

On charge No. 1	$15.00
On charge No. 2	3.50
On 2 charges	$18.50

In connection with the above charges your examiner feels that the county commissioners should acquaint themselves with the statutes governing the administration of the County Home. The illegality of allowing the above described condition to exist is clearly defined in Section 2522 G. C. That part of the law is hereby expounded for their edification.

The superintendent and matron shall be removed if they or either of them, require or permit inmates or employees to render services for the private interests of the superintendent, matron or member of the board of county commissioners or *any private interest.*

We are forever mindful of your duty to the taxpayers of Lake County and do not propose to take any dictatorial attitude in telling the commissioners what they should or should not do in the case now pending. Suffice to say that sections of the general code will be set out in this report from time to time for their enlightenment.'

We might say that the examination of the County Home was covering a period from September 1st, 1931, to January 6th, 1934, and there were findings against the Superintendent in addition to the above, two sales of county produce, amounting to $10 00, and one finding of $18.06, which is not questioned by the Superintendent and has been paid.

The purpose of this request is to ascertain whether the wording of General Code Section 2522 makes it mandatory upon the County Commissioners to remove the County Home Superintendent, because of the first two findings, in the event the Commissioners should be of the opinion that, except for the first two findings, there is not sufficient evidence to remove the County Home Superintendent, taking into consideration that portion of the General Code, Section 2523, which reads as follows:

'he (the County Home Superintendent) shall not be removed by them (the commissioners) except for good and sufficient cause.'

I am enclosing an opinion rendered in the same matter, which our office rendered to the Board of County Commissioners, March 5th, 1934."

Section 2522, General Code, referred to in your letter, reads in part as follows:

"The board of county commissioners shall make all contracts for new buildings and for additions to and repairs of existing buildings necessary for the county infirmary and shall prescribe such rules and regulations as it deems proper for its management and good government

and to promote sobriety, morality and industry among inmates. The superintendent may employ a matron and such labor from time to time, at rates of wages to be fixed by the county commissioners, as may not be found available on the part of the inmates of the institution.

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 interest. At least once a month the board of county commissioners shall make a complete inspection of the physical and sanitary conditions of the infirmary buildings and grounds and an examination into the care and treatment of the inmates thereof, unaccompanied by the superintendent or matron."

The sole question presented by your letter is whether the word "shall" is to be given its ordinary meaning, and thus be construed as mandatory, or is it to be given a permissive meaning. This is one of the most perplexing questions in the entire field of statutory construction. It is caused mainly by the inadvertent use of such language by the legislative bodies and the apparent willingness of the courts to remedy such evils. The cases are legion, both in and out of this state, where the courts have construed the word "may" as "shall" and the word "shall" as "may". Any attempt to harmonize all these cases would be, to say the least, futile.

As stated in 25 R. C. L. 769:

"The question whether a duty imposed by statute on a public officer, the performance or nonperformance of which affects the rights of others, is mandatory or merely directory, is a very common but often a very difficult one to decide."

The following is to be found in 2 Lewis' Sutherland Statutory Construction 1153:

"The words 'may' and 'shall' are to be taken in their ordinary and usual sense, unless the sense and intent of the statute require one to be substituted for the other."

It is to be noted that section 2522, General Code, makes use of the word "shall", and it should be given a mandatory interpretation unless it can be fairly presumed that the legislature intended an opposite conclusion.

As stated in the first branch of the syllabus in the case of *State, ex rel. Spira,* vs. *Board of County Commissioners,* 32 O. A. 382:

"Purpose of construction of statute is to ascertain and give effect to legislative intent, and in doing so court should seek intent, in language employed in statute, giving full effect to every word used."

The Supreme Court of Ohio in the case of *Devine* vs. *State,* 105 O. S. 288, held that unless a directory or discretionary character clearly appears, a statute will be deemed mandatory.

In your letter you refer to the fact that section 2523, General Code, relating to the appointment of the superintendent of a county home, provides that the

superintendent shall not be removed by the county commissioners, "except for good and sufficient cause." Section 2522, General Code, may be harmonized with this provision in that it provides a penalty for specific acts of misconduct upon the part of the superintendent. Obviously, the legislature intended that the superintendent should not permit the inmates to render services for the private interests of any person, and in order to prevent such conditions, has placed a severe penalty upon such conduct. It is significant that the particular portion of section 2522, relative to the removal of the superintendent, was inserted in 108 O. L., Pt. I, page 266. Section 2523, General Code, had been on the statute books of Ohio for some time when the above portion of section 2522 was inserted. In the enactment of this mandatory provision, the legislature must be presumed to have had in mind existing laws, and hence intended that section 2522 should be an exception to the general laws relative to the removal of the superintendent.

In your letter you state that the Bureau of Inspection and Supervision of Public Offices has made several findings under this section and that it is by virtue of these findings that the present question is presented. It is well settled that such findings are not in the same classification as adjudicated cases. In other words, the county commissioners are not absolutely bound to find that the superintendent violated the section of the General Code in question merely because of the finding or findings made by the Bureau of Inspection and Supervision of Public Offices. However, once the county commissioners have determined that the superintendent has violated section 2522, there is no discretion resting in the county commissioners but they must remove him. It is to be noticed that in case the superintendent in question is removed the civil service laws should be carefully followed.

It is therefore my opinion, in specific answer to your question, that 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, 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.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2544.

APPROVAL, NOTES OF HOUSTON RURAL SCHOOL DISTRICT, SHELBY COUNTY, OHIO—$1,775.00.

COLUMBUS, OHIO, April 23, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.