

I am not unmindful of a line of cases which hold that where the funds deposited in the bank are public moneys, and where the deposit of the same is in violation of law or without statutory authority and the bank has knowledge of the public character of such funds, the relation of debtor and creditor does not arise from the transaction, but the bank, with respect to the funds deposited with it, becomes a trustee and liable for all profits accruing to such bank in the use of the funds so deposited and the public is entitled to such profits as interest on such funds and as an increment of the principal sum deposited.

*Franklin Natl. Bank v. Newark*, 96 O. S., 453;  
*City of Newark v. Peoples Nat. Bank*, 15 C. C. (n. s.) 276; 90 O. S., 470;  
*State ex rel. Campbell v. Natl. Bank*, 4 N. P. (n. s.) 245.

In the instant case the funds were placed in pursuance of statutory authority found in Section 4517, General Code, so the rule in such cases would not apply.

In specific answer to your inquiry, therefore, I am of the opinion that:

1. When the bonds and coupons of a municipality are payable at a depository of such municipality, interest must be paid by such bank upon the money placed in such bond and coupon account; and
2. Where a bond and coupon redemption account of a municipality remains at a bank after it has ceased to be a depository for such municipality, interest is not thereafter payable thereon until such bank defaults after demand for payment of funds so held.

Respectfully,  
 GILBERT BETTMAN,  
*Attorney General.*

2902.

VILLAGE SCHOOL DISTRICT—JOINED TO RURAL SCHOOL DISTRICT  
 UNDER SECTION 4682-1, GENERAL CODE—DISPOSITION OF UN-  
 EXPENDED BALANCE IN VILLAGE DISTRICT CONSIDERED.

**SYLLABUS:**

*An unexpended balance remaining in a special fund which has been maintained by a rural school district for the purpose of meeting the interest and principal requirements of bonds heretofore issued by a village school district, dissolved under Section 4682-1, General Code, and joined with the rural school district, should, after all such bonds have been retired, be transferred to the bond retirement fund or sinking fund of the present rural school district in accordance with the provisions of paragraph (6) of Section 5625-13, General Code, unless the present district has no bonds outstanding, in which event transfer should be made to some other fund of the present district with the approval of the court of common pleas.*

COLUMBUS, OHIO, February 2, 1931.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

A village school district under the provisions of Section 4682-1 of the General Code voted to dissolve and join a rural school district. The village district so dissolving had bonds outstanding and under opinions of the Attorney General the board of education of such a district continued in existence for a time for the purpose of levying a tax upon the original village school district for the payment of its bonds. Afterwards the board discontinued and the clerk of the board, who is now the clerk of the combined district, continued to levy a tax until the bonds were all redeemed. Our examiner finds that there is now in the bank in this district the sum of \$736.38, which represents an amount received for the payment of bonds in excess of the amount required for such payment and some accumulated interest. No person seems to have any control over this fund in the bank except the clerk of the combined district, who was prior to the combination the clerk of the village district.

Question: What disposition should be made of this money, which was raised by a tax levy upon the property of the original village school district?"

The opinions to which you refer are, an opinion appearing in Opinions of the Attorney General for 1915, Vol. I, p. 554, and opinions following this opinion appearing in Opinions of the Attorney General, 1917, Vol. I, pp. 359 and 859, wherein it was held that when a village school district has voted to dissolve and attach itself to a contiguous rural school district under Section 4682-1, General Code, and such village school district at such time has outstanding bonds, the board of education as the taxing authority of the dissolved village school district continues in existence for the purpose of levying a tax upon the property that theretofore comprised the village school district for the purpose of paying such bonded indebtedness. The conclusions in this opinion were reached on account of the provisions of Section 4689 and 3514 of the General Code, therein discussed.

In the case you present this 1915 opinion was apparently not strictly followed, since you state that the clerk of the board of the dissolved village school district has been levying a tax upon what heretofore comprised the village school district, until all of the bonded indebtedness was paid. You do not inquire as to the validity of these acts of the clerk and since it is probably not necessary in answering your question, no opinion is expressed thereon.

I am advised that the present rural school district comprising what was heretofore the village school district and the rural school district has bonds outstanding and a bond retirement fund, but that a special bond fund has been kept for the particular issue of bonds of the dissolved village school district, which issue has now been paid in full. The only section of the Budget Law relating to the transfer of money from one fund to another is Section 5625-13, General Code, which section provides insofar as pertinent as follows:

"No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:

\* \* \* \* \*

c. The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision.

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Section 5625-9 provides the funds that each subdivision shall establish. They are the following:

- “(a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose.
- (g) A special fund for each public utility operated by a subdivision.
- (h) A trust fund for any amount received by a subdivision in trust for any lawful purpose.”

It is my view that this special fund should be considered, for the purposes of the disposition thereof, as a part or branch of the bond retirement fund of the present district providing, of course, the issue of the dissolved village district was an issue of serial bonds. If this old issue was an issue of term bonds, then this fund in question should be considered as a part of or the entire sinking fund of the present district. Such being the case, it must follow that the unexpended balance about which you inquire should be apportioned to the credit of the various other branches of the sinking fund for the payment of the other term bonds of the present subdivision, or to the bond retirement fund for the payment of the other serial bonds of the present subdivision under paragraph (c) of Section 5625-13, *supra*.

I am not unmindful of the fact that the transfer of this unexpended balance to the bond retirement fund of the present district raises a question of equities between the taxpayers of that portion of the district within the village and those outside. It is obvious, however, that the legislature has made no special provisions or imposed no restrictions upon the transfer of such moneys which may have been raised by a tax upon a portion of the property in a subdivision.

A question involving somewhat similar equities was considered in my opinion No. 2890, rendered under date of January 30, 1931, the syllabus of which is as follows:

“No part of the money in the road maintenance and repair fund of a township may be paid to a municipality situated either in whole or in part within such township, notwithstanding the fact that a portion of such money has theretofore been transferred under Section 5625-13c, General Code, to the township road maintenance and repair fund from another fund raised by taxes levied upon all the property within the township, including the property within such municipality.”

The facts under consideration in the foregoing opinion were as follows: There remained in the bond retirement fund an unexpended balance derived from a tax on all property in the township including a village situated therein. This money was transferred with the approval of the court of common pleas under paragraph (c) of Section 5625-13, *supra*, to the township road maintenance and repair fund, a fund customarily made up of the proceeds of a general tax upon the property of the township outside of any incorporated city or village or part thereof situated in the township.

If a part of the money derived from a general tax upon all the property of a subdivision may eventually find its way into a fund for the benefit of a portion of the subdivision, there is, conversely, no reason why a part of the money derived from a

levy upon a part of the subdivision may not eventually find its way into a fund for the benefit of the entire subdivision. Such, in any event, was the legislative intent in failing to place any further restrictions upon the transfer of funds than those contained in Section 5625-13, General Code.

In the event the present rural school district were to have no bonds outstanding, then the transfer of this balance should be made under paragraph (c) of Section 5625-13, General Code, with the approval of the court of common pleas, to some other fund of the present subdivision.

Specifically answering your inquiry, it is my opinion that an unexpended balance remaining in a special fund which has been maintained by a rural school district for the purpose of meeting the interest and principal requirements of bonds heretofore issued by a village school district, dissolved under Section 4682-1, General Code, and joined with the rural school district, should, after all such bonds have been retired, be transferred to the bond retirement fund or sinking fund of the present rural school district in accordance with the provisions of paragraph (c) of Section 5625-13, General Code, unless the present district has no bonds outstanding, in which event transfer should be made to some other fund of the present district with the approval of the court of common pleas.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2903.

TOWNSHIP TRUSTEE—IN CHARGE OF MAINTENANCE AND REPAIR OF TOWNSHIP ROAD—MAY RECEIVE COMPENSATION FOR WORK THEREON—SUBJECT TO STATUTORY LIMITATION PER DAY AND YEAR—CONDITIONS NOTED.

**SYLLABUS:**

1. *A township trustee in charge of township road maintenance and repair may, under Section 3370, General Code, drive a tractor or grader on such roads and receive \$2.50 per day for each day of service in the discharge of such duties, but the total compensation of such township trustee, to be paid from the treasury, shall not exceed the \$250.00 yearly limitation imposed by Sections 3294 and 3372, General Code.*

2. *Under Section 12912, General Code, a township trustee is prohibited from receiving compensation for the driving of a tractor or grader on roads situate in the township under the supervision of another township trustee who has control of such roads by authority of Section 3370, General Code.*

COLUMBUS, OHIO, February 2, 1931.

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

GENTLEMEN:—Acknowledgment is made of your request for my opinion, which reads as follows:

“Section 3370 of the General Code provides three methods whereby the township roads may be kept in repair. When the 1st or 2nd method is followed, Section 3372 G. C., provides that the trustee or trustees designated to have