

2633.

TOWNSHIP TREASURER ENTITLED TO STATUTORY FEES FOR SERVICES UNTIL DEPOSITORY IS OFFICIALLY ESTABLISHED.

SYLLABUS:

*In instances wherein a township did not have a depository on January 1, 1924, and one was not established until one month thereafter, the term of the township treasurer did not end until the depository was officially established, and such treasurer would be entitled to his statutory fees for such period.*

COLUMBUS, OHIO, July 1, 1925.

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

GENTLEMEN:—In your recent communication you present the following inquiry:

“Section 3316-1, General Code, as enacted 110 Ohio laws 30, abolished the office of township treasurer. Section 3 of house bill No. 43, of which the foregoing section is a part, provides:

“This act shall not take effect until the expiration of the terms of the present township treasurers or until January 1st, 1924.”

“Section 3316-1, General Code, reads in part:

“When a depository has been provided for the township moneys, as authorized by this act, the township trustees shall dispense with a treasurer.”

“In construing the above provision of section 3316-1 G. C., a prosecuting attorney advised a township treasurer to keep up his books until such depository has been established.

“*Question*: Can a township treasurer legally be paid 2% on disbursements made by his township during January, 1924, for the reason that a new depository was not provided for the township moneys ‘as authorized by this act’ until one month after the office of township treasurer was abolished by the taking effect of house bill No. 43 on January 1st, 1924?”

Your inquiry presents difficulty in view of the fact that section 3320 as amended in the act, and also as it existed at the time of said amendment, specifically required township trustees to provide a county depository. It would therefore be presumed that the township trustees had complied with the law which would argue that the legislature did not contemplate that such depository would have to be established after January 1, 1924, at the time the amended act became effective.

However, in section 3316-1, the language is used “when a depository has been provided,” the township trustees shall dispense with the treasurer. If the legislature intended, and were acting upon the assumption that depositories would be provided in all cases, it would have been unnecessary to use the language which it did. It could have made the direct statement that on January 1, 1924, at the end of the present terms of township treasurers, the clerk should perform all the services and the money should be deposited with the depository. This then conveys the idea that it was in the minds of the legislature that there would be instances wherein no depository had been established, notwithstanding the mandatory provisions of the statute requiring the same.

In view of the foregoing analysis of the statutes involved, it is the opinion of this department that in the case you present the services of the township treasurer did not legally terminate until the depository was established, and that he could legally draw his compensation until his services were terminated.

Respectfully,

C. C. CRABBE,

*Attorney General.*